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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 273

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, MEMPHIS UNION STATION COMPANY, AND UNION RAILWAY COMPANY, *Petitioners*,

v.

INTERSTATE COMMERCE COMMISSION, CITY OF MEMPHIS, TENNESSEE, AND RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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v.

INTERSTATE COMMERCE COMMISSION, CITY OF MEMPHIS, TENNESSEE, AND RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled actions on March 31, 1966.

Opinions Below

The memorandum decision of the District Court is reported as *Interstate Commerce Commission* v. *Memphis Union Station Co.*, 230 F. Supp. 456, and is printed as Appendix B hereto, *infra*, pp. 7a-25a. The opinion of the Court of Appeals is not yet reported and is printed as Appendix D hereto, *infra*, pp. 36a-50a.

Jurisdiction

The judgments of the Court of Appeals were entered on March 31, 1966. Appendix E, *infra*, pp. 51a-55a. A timely petition for rehearing filed by the petitioners Louisville and Nashville Railroad Company and Illinois Central Railroad Company on April 19, 1966, was denied on May 6, 1966. Appendix F, *infra*, p. 56a. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

Questions Presented

1. Whether Interstate Commerce Commission approval is required by Section 1(18) of the Interstate Commerce Act before a carrier by railroad may relocate its passenger station facilities, where no abandonment of track is involved apart from "stub-end" station tracks, which lead only from the station users' mainline tracks to station platforms and buildings and which are used only for loading and unloading of passengers, switching, storage, cleaning and repair of cars, and similar purposes.

2. Whether Commission approval is required by Section 5(2) and (4) of the Interstate Commerce Act before a carrier by railroad may use passenger station facilities owned by another railroad which it reaches from its own through-track on "stub-end" station tracks, which lead only from the mainline track to the station and which are used only for loading and unloading of passengers, switching, storage, cleaning and repair of cars, and similar purposes.[1]

Statutes Involved

The statutory provisions involved are Sections 1(18)-(20), (22) and 5(2), (4), (8) of the Interstate Commerce Act, added by 41 Stat. 477-478 (1920) and 48 Stat. 217-219

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[1] This question is applicable to petitioners Louisville and Nashville Railroad Company and Illinois Central Railroad Company only.

(1933), as amended, 49 U.S.C. §§ 1(18)-(20), (22), 5(2), (4), (8). They are printed as Appendix A, *infra*, pp. 1a-6a.

Statement of the Case[2]

For many years, petitioners Missouri Pacific Railroad Company ("MoPac"), Louisville and Nashville Railroad Company ("L&N"), Southern Railway Company ("Southern") and Illinois Central Railroad Company ("Illinois Central") have provided rail passenger service in interstate commerce to the City of Memphis, Tennessee. Petitioner Union Railway Company ("Union Railway"), a wholly-owned subsidiary of MoPac, owns the main line tracks used by the MoPac passenger trains to reach Memphis (App. 48a, 305a).

In 1909, the N. C. & St. L. Ry. Co. (later merged into L&N) and the MoPac, L&N, Southern and the St. Louis Southwestern Railway Company ("Cotton Belt")[3] organized the petitioner Memphis Union Station Company ("Union Station") for the purpose of constructing and maintaining a union passenger depot for the joint use of the proprietary railroads as tenants. The union station was completed in 1912, at which time the four railroads re-routed their passenger trains from their former stations in Memphis to the new union depot (App. 174a). Forty percent of Union Station's stock is owned by the L&N; each of the three other railroads owns 20% of the shares (App. 53a). The expenses of Union Station have been prorated among the proprietary railroads, as tenants, on a user basis (App. 49a).

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[2] Citations to "App." in this Petition are to the "Joint Appendix of Defendants-Appellants" in the Court of Appeals, a copy of which is included in the certified copy of the Record filed herein.

[3] The Cotton Belt was a defendant and appellant below. However, the injunction in this case does not order the Cotton Belt either to do anything or to refrain from doing anything, and in consequence the Cotton Belt is not a petitioner herein.

Union Station's property is located immediately north of the mainline tracks of the L&N, Southern and Union Railway on Broadway (App. 305a). To reach the Union Station tracks, passenger trains backed into the station from the mainline tracks on Broadway. They departed by the same route, the station tracks being "stub-end" tracks leading to nothing but the station building and related facilities (230 F. Supp. at 458-459, App. 174a-175a, Appendix B, *infra*, pp. 8a-9a). A map of the tracks appears in Appendix G, *infra*, p. 57a.

Prior to 1925, Union Station classified its station tracks as "mainline" tracks in reports filed with the Interstate Commerce Commission. In that year, however, the Commission ruled, in *Memphis Union Station Co.*, 97 I.C.C. 418, 423-424, 429 (1925), that the company "owns no mainline mileage" and characterized Union Station's tracks as "yard tracks and sidings." Since that time, Union Station, by order of the ICC, consistently has identified its tracks in reports to the Commission as "yard tracks" (App. 70a). The tracks provided access to the station and were used only for loading and unloading passengers, switching, storage, cleaning and repairing cars, and similar purposes (App. 255a-272a).

On November 1, 1952, the Cotton Belt discontinued its passenger service to Memphis by authority of the Arkansas Public Service Commission. Thereafter, it ceased to use Union Station (App. 33a-34a, 51a). No approval for this withdrawal by Cotton Belt was obtained from the Commission; nor did the Commission ever allege that this action required prior Commission approval.

The original agreement for the operation and use of Union Station expired April 1, 1962. Subsequently, MoPac, L&N and Southern extended the agreement another two years, to April 1, 1964 (App. 43-46a). Confronted with the

economic pinch of declining rail patronage and rising costs of operating Union Station (App. 49a, 59-60a),[4] none of the tenant railroads desired any further extension of the agreement. Upon the expiration date, both MoPac and Southern reactivated their former passenger stations in Memphis, and the L&N agreed with Illinois Central to share the use of the Illinois Central's station two blocks west of Union Station (App. 48a, 54a, 61-62a, 177a).[5]

On February 27, 1964, the Director of the Bureau of Finance of the Interstate Commerce Commission wrote to MoPac, L&N and Southern, inquiring as to their intentions and asking whether any abandonment was contemplated that required Commission approval (App. 20a, 28a-29a, 176a). Both MoPac and L&N, by written replies, confirmed their intention to leave Union Station at the expiration of the agreement and expressed their opinion that no Commission approval was required. Southern advised the Commission orally that if the other two railroads terminated operations at Union Station, it would have no alternative but to do likewise (App. 21a-22a, 29a-30a; 230 F. Supp. at 459-460, App. 176a, Appendix B, *infra*, pp. 9a-10a).

On March 16, 1964, the Commission's Director, Bureau of Finance, again wrote to the interested railroads, saying

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[4] To illustrate the decline in business and the increase in operating costs, Southern experienced a decline of more than 20% in revenue passengers in and out of Memphis between 1959 and 1963, while during the same period Southern's annual expenses at the Union Station rose from $490,377 to $535,354 (App. 59a-60a).

By way of contrast, Southern's expenses at the new facility were estimated to be just over $200,000 a year (App. 60a).

[5] Southern's station is located on its own tracks (App. 63a); MoPac's station is located on Union Railway tracks over which MoPac had existing rights of user (App. 48a, 50a); and the L&N, which has had the right to use tracks at the Illinois Central Station and has used them continuously since 1907 (App. 56a), reaches the Illinois Central Station from its own mainline track over Illinois Central switching tracks at the Illinois Central's station (App. 54a-56a).

that it was his "informal opinion that a railroad may not abandon operations over a line of another such carrier without approval under section 1(18), except to the extent it may be exempt as provided in that section or in section 1(22)," and suggesting that "in order to avoid a possible violation of the Interstate Commerce Act" the railroads consider filing "appropriate applications which may be accompanied by motions to dismiss for lack of jurisdiction" (App. 23a-24a). By written replies, dated March 24 and 25, 1964, both L&N and MoPac reiterated their view that the relocation of their Memphis passenger facilities was exempt from the requirement of prior Commission approval under Section 1(18) (App. 26a-27a, 31a-32a). No further communication was received from the Commission, and on April 1, 1964, each of the three railroads terminated operations at Union Station and commenced using station facilities at their new locations in Memphis.

On May 14, 1964, over seven weeks after these changes had been made, the Commission filed a complaint in the United States District Court for the Western District of Tennessee against Union Station, its proprietary railroads, and Illinois Central (App. 7a). The jurisdiction of the District Court was invoked under Sections 1(22) and 5(8) of the Interstate Commerce Act, 49 U.S.C. §§ 1(22), 5(8) (App. 8a).

The complaint alleged that on April 1, 1964, Union Station, MoPac, L&N and Southern had abandoned operations at Union Station without having first obtained from the Commission a certificate that the present and future public convenience and necessity permit of such abandonment, as allegedly required by Section 1(18) of the Interstate Commerce Act, 49 U.S.C. § 1(18), and prayed that the District Court issue an injunction, under Section 1(20) of the Act, 49 U.S.C. § 1(20), restraining those petitioners from

abandoning or contributing to the abandonment of the use and operation of Union Station's facilities.

The complaint also alleged that commencing April 1, 1964, L&N had instituted passenger service to and from the Memphis station of Illinois Central without having first obtained Commission approval, as allegedly required by Section 5(2) of the Interstate Commerce Act, 49 U.S.C. § 5(2), and prayed that the District Court issue an injunction, under Section 5(8) of the Act, 49 U.S.C. § 5(8), restraining L&N from using Illinois Central's station and station tracks.

Both the City of Memphis and the Railway Labor Executives' Association intervened as plaintiffs in support of the Commission's complaint (App. 37a-42a).

After a hearing on the Commission's motion for preliminary injunction, the District Court on June 12, 1964, issued a memorandum decision (230 F.Supp. 456, App. 173a-195a, Appendix B, *infra*, pp. 7a-25a), which was supplemented on July 6, 1964, by a letter to all parties (App. 199a-201a; Appendix B, *infra*, pp. 26a-28a). In the memorandum decision, the District Court concluded:

> (1) "that at least some of the tracks at Union Station do constitute a 'line of railroad' within the meaning of Sec. 1(18) of the Act and conversely are not 'spur' or 'switching' tracks within the meaning of Sec. 1(22); and further that the cessation of operations over these tracks constitutes an abandonment and not a mere relocation. Accordingly, Union Station, L&N, Southern and MoPac have abandoned a line of railroad in violation of the provisions of Sec. 1(18)."
>
> (2) "that some of the tracks at Illinois Central terminal are likewise a 'railroad line' within the meaning of Sec. 5(2) of the Act and conversely are not 'spur' or 'switching' tracks within the meaning of

Sec. 1(18) of the Act; and further that the institution of operations there by L&N constitutes an acquisition of trackage rights and not a mere relocation. Accordingly, L&N has acquired trackage rights over or joint use of a line of railroad in violation of Sec. 5(2) and 5(4) of the Act." (230 F.Supp. at 466-467, App. 192a, Appendix B, *infra*, p. 23a.)

After further hearing, the Court entered its final judgment on October 14, 1964 (App. 277a-283a; Appendix C, *infra*, pp. 29a-32a), which it amended on October 23, 1964 (App. 286a; Appendix C, *infra*, pp. 29a-34a). The judgment confirmed the prior findings of the memorandum decision and granted a Commission motion for summary judgment, in part, in that it permanently enjoined Union Station, MoPac, L&N and Southern, from "their continued abandonment" of a "line of railroad" at Union Station without approval of the Commission, and enjoined L&N and Illinois Central "from the continuation and effectuation of their arrangement for the acquisition of trackage rights over or joint use of" the Illinois Central's passenger station facilities unless and until such arrangement is authorized by the Commission. Those permanent injunctions were stayed pending appeal upon the posting of supersedeas bonds by petitioners Union Station, MoPac, L&N and Southern.

On appeal, the Sixth Circuit affirmed. Appendices D, E, *infra*, pp. 36a-55a. That Court's opinion rejected the petitioners' contention that the tracks involved in the cessation of operations at Union Station were, under Section 1(22) of the Interstate Commerce Act, exempt from the requirements of Section 1(18) as "spur . . . team, switching, or side tracks," and the related contention of petitioners L&N and Illinois Central that their institution of joint use of the Illinois Central station was, under Section 1(18), exempt from the requirements of Section 5(2) of

the Act because the Illinois Central tracks involved likewise were "spur . . . team, switching, or side tracks."[6] However the Court stayed the issuance of its mandate to June 22, 1966, to permit the filing of this petition for certiorari.

Reasons for Granting the Writ

1. *The Section 1(18) issue—the first question presented—should be reviewed by this Court.*

The decision below with respect to the application of Section 1(18) of the Interstate Commerce Act overturns what has been settled law for over 40 years; it is contrary to the intent of the Congress which enacted Section 1(18) in 1920, conflicts in principle with applicable decisions of this Court, and is opposed to a settled administrative construction of Section 1(18) which has been followed uniformly since the statute was first enacted. Whether the decision is right is a question of great importance to the nation's railroads which should be decided by this Court. For, if the decision below is right, the railroads will find themselves in violation of Section 1(18) for having discontinued passenger operations at particular stations without ICC approval on hundreds of occasions in the past, in reliance on the previously settled law.

a. Under the Interstate Commerce Act, the Interstate Commerce Commission has no power to approve or disapprove passenger station abandonments as such. Rather, as was recognized by the Court below, the Commission's only relevant power is the power vested in it by Section 1(18), which concerns only abandonments of *track*, not

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[6] The opinion did not discuss the further contention by L&N and Illinois Central that Commission approval under Section 5(2) was not required because L&N had had the right to use Illinois Central's track at the Memphis station since 1907 and had used it continuously in freight operations since that date (App. 54a-56a).

buildings. Section 1(18) provides that without Commission approval, no carrier by railroad "shall abandon all or any portion of a line of railroad, or the operation thereof." But, by virtue of Section 1(22) of the Act, the Commission's power under Section 1(18) does "not extend to the . . . abandonment of spur, industrial, team, switching, or side tracks, located . . . wholly within one state."[7]

Thus, whether Commission approval must be obtained before passenger operations at a station are discontinued by a carrier turns on whether an abandonment of track, other than "spur, industrial, team, switching, or side tracks," will result.

Railroad passenger stations are of three basic kinds. Some, found in smaller communities, are located beside the users' main line and have no separate terminal track for loading and unloading passengers. Passenger trains simply stop on the through track to load and unload passengers. Other stations —such as the Memphis Union Station—have sidings or "stub-end" spurs on which the loading and unloading of passengers is accomplished. They may also have other tracks used for such purposes as switching, car-storage, and train repair. Still others—such as the Union Station in Washington, D. C.—sit astride the main through tracks of the users, although they may also be equipped with additional "stub-end" terminal tracks. In such stations, passenger trains may enter from one direction, load and unload passengers, and continue on in the same direction.

It seems plain on the face of the statute that the abandonment of a station which has no tracks of its own is not subject to Section 1(18). It seems equally obvious that the abandonment of a "stub-end" station—such as Memphis Union Station—is not subject to Section 1(18) as long as

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[7] The tracks here involved are all located "wholly within" Tennessee.

mainline track outside the station is not also abandoned at the same time. The only abandonment is of tracks which cannot carry through traffic but instead are "stub-end" ("spur" tracks) and are used for loading and unloading, switching, and storage and maintenance purposes ("team", "switching", and "side" tracks). In petitioners' view, only when terminal tracks are also "through" tracks and thus not "spur, industrial, team, switching, or side tracks" —i.e., only when the terminal track of a "through" station is abandoned—is a station abandonment within the ambit of Section 1(18) and not exempt under Section 1(22).

Accordingly, it seems plain on the face of Section 1(18) and (22) that the discontinuance of operations at Memphis Union Station did not require Commission approval because no through or "mainline" track was abandoned. And, as we show in subsections (b) through (d) below, the legislative history of those provisions confirms that they were intended to mean just what they appear to mean—that the dispositive question is whether through or "mainline" track is abandoned—and repeated decisions by courts and the Commission have uniformly so held.

b. The legislative history of Section 1(18) demonstrates conclusively that, contrary to the decision below, the Congress which enacted Section 1(18) intended to give the Commission *no* jurisdiction over passenger station abandonments, apart from abandonments of through or "mainline" track.

All the provisions in the Interstate Commerce Act dealing with the jurisdiction of the Interstate Commerce Commission over the abandonment of a line of railroad or the operation thereof—49 U.S.C. § 1(18)-(22)—and the jurisdiction of the Commission over "terminal facilities"—49 U.S.C. §§ 1(15) and 3(5)—were added to the Act by Sections 402 and 405 of the Transportation Act of 1920, 41

Stat. 476, 479. Prior to that time, despite extensive regulatory authority over railroad rates, fares, and services, the Commission had not been granted any authority over construction or abandonment of track, station, or terminal facilities. The extent to which the Commission should be given jurisdiction over these subjects was a matter of heated dispute during the debate leading to enactment of the 1920 Act.

The original version of the Transportation Act of 1920, introduced by Congressman Esch of Wisconsin in 1919,[8] would have granted the Commission sweeping new powers over construction and abandonments. It contained the substance of what became Sections 1(18)-(21) of the Interstate Commerce Act, but prohibited *any* abandonment of a "line of railroad", or the operation thereof, without Commission approval.[9] There were no exemptions or exclusions.[10]

The proposal to give the Federal commission authority over extensions and abandonments evoked severe opposition from the state railroad commissions. At hearings on the Esch bill, the president of the National Association of Railroad and Utility Commissioners strenuously urged that the state commissions should have exclusive jurisdiction over all abandonment matters[11] and over all new construction of side tracks and spur, industrial, team, and switching tracks.[12]

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[8] H.R. 4378, 66th Cong., 1st Sess., June 2, 1919, reprinted in MacVeagh, *The Transportation Act of 1920*, pp. 517-28 (1923).

[9] H.R. 4378, 66th Cong., 1st Sess., June 2, 1919 (reprinted in MacVeagh, pp. 519-20).

[10] In addition, the Commission would have been granted the authority, in specified circumstances, to require "joint or common use of terminals" in emergencies as well as the general power to require "the terminals of any carrier to be open to the traffic of other carriers." *Id.*, Secs. 2 and 4 (MacVeagh, *supra*, pp. 519, 521). These were the precursors of the present Sections 1(15)(c) and 3(5) of the Interstate Commerce Act.

[11] Hearings on H.R. 4378, House Interstate and Foreign Commerce Committee, 66th Cong., 1st Sess., pp. 1606-11.

[12] *Id.*, pp. 1594, 1611.

The House committee refused to delete entirely the proposed grant to the ICC of authority over abandonments. It did, however, adapt the National Association of Railroad and Utility Commissioners' recommendation so as to exempt from the certificate requirement "the construction or abandonment of side tracks, or of spur, industrial, team or switching tracks * * * if such tracks or lines are located or to be located wholly within one State." [13]

The reason for giving the Interstate Commerce Commission only restricted jurisdiction over abandonments was explained on the floor of the House [14] by Congressman Esch, the chairman of the House committee and the sponsor of the bill. His statement makes clear the intent to withhold from ICC jurisdiction the abandonment of terminal tracks:

> "Railroads sometimes desire to surrender the rights granted by their charter. The traffic is not what they expected, business conditions change, the natural resources they thought first to get out to the open market become depleted or become exhausted. There is no power now to restrain abandonment under Federal law. Railroads in many States can do as they will. We provide that there shall be *some* Federal control

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[13] H.R. 10453, 66th Cong., 1st Sess., Nov. 8, 1918, Sec. 402 (reprinted in MacVeagh, *supra*, pp. 597-627).

[14] The House Report concerned itself solely with the need for Federal control over certain extensions. "Your committee believes that the requirement of such a certificate, so far as extensions are concerned, will tend to stabilize existing conditions and prevent the construction of unnecessary or parallel lines which, without any reasonable hope of profitable operation, would become a burden to the public. A similar provision in the laws of several states has proven successful in preventing the construction of weak lines. This provision of the bill, however, does not extend to the construction or abandonment of sidetracks, or of spur, industrial, team, or switching tracks, or of street car and electric interurban lines, if such tracks or lines are located or are to be located wholly within one State." H.Rep. No. 456, 66th Cong., 1st Sess., Nov. 10, 1919 (reprinted in MacVeagh, *supra*, pp. 218-19).

over the matter of abandonment, so that cities and villages that have been built up on these lines can be given due consideration by the regulatory body before the order for abandonment is issued. We give such control to the commission to investigate the situation and determine the facts. *But neither provision, the building of new lines or the abandonment of old ones, affects spurs or switches or terminal tracks* or interurban lines wholly within a State. *These we leave to State control, where they already belong.*" (58 Cong. Rec. 8316.)[15]

It is difficult to perceive a clearer exposition of the Congressional intent that abandonments of terminal track, at least insofar as they involve only "spurs" and "switches" not part of a through main line, were to be left to the discretion of the railroads concerned, subject only to such control as the states might exercise. Contrary to the view of the Court below (Appendix D, *infra*, p. 47a), that explanation was *authoritative*, by the author and floor manager of the bill, and the language of the bill as then explained was substantially the same as that finally enacted.[16]

If any doubts remained, however, they were set to rest shortly thereafter when the House considered what is now Section 3(5) of the Act, dealing with the Commission's power to require joint use of terminal facilities. As reported to the House, that provision gave the Commis-

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[15] Italics in quotations herein have been added unless otherwise indicated.

[16] On the House floor, the exemption provision was expanded to exclude all extensions or abandonments wholly within one state, leaving the Commission with jurisdiction over interstate track only. 58 Cong. Rec. 8538. The Senate, however, restored the version of the exemption drafted by the House committee. H.R. 10453, 66th Cong., 1st Sess., as amended by the Senate, December 20, 1919, Sec. 34 (MacVeagh, *supra*, pp. 681, 684). The conference report approved the Senate's action, H. Rep. No. 650, 66th Cong., 2d Sess., Feb. 18, 1920 (MacVeagh, *supra*, p. 219).

sion discretionary authority to require that railroad terminals be open to other carriers on prescribed conditions, but it did not require Commission approval in each case before a carrier could change its terminal arrangements.[17]

On the floor of the House, Congressman McClintic of Oklahoma proposed the following amendment to this section:

> "Provided, further, That the commission is hereby given authority to require a carrier to maintain his present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the commission to be just and reasonable. *No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the commission*" (58 Cong. Rec. 8578).

Explaining his amendment, Congressman McClintic expressed fear that many railroads would withdraw from joint terminal arrangements which had been required while the railroads were under Federal control during and after World War I. "The object of my amendment," he said, "is to cause any railroad company *before* it withdraws from the present use of a union depot to make application to the commission and receive a favorable report before any action can be taken." (*Ibid.*) In response to a statement of Congressman Black of Texas that depot facilities had been traditionally and should be regulated by the state commissions, Congressman McClintic said that since the bill "practically does away with all the jurisdiction of the State corporation commission," the public's only recourse against the abandonment of depots would be to the limited authority of the ICC

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[17] H.R. 10453, 66th Cong., 1st Sess., November 8, 1919, Sec. 405 (reprinted in MacVeagh, *supra*, p. 616).

in what is now Section 3(5). 58 Cong. Rec. 8579. Congressman Esch immediately sought to reassure the House that this was not the case. He noted that while the bill gave the Commission limited authority to require joint use of terminals, this did not divest the states of jurisdiction:

> "[T]he matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several States. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill has sought not to encroach upon such powers. The matters of depots and joint use of depots is practically in the jurisdiction of the State commissions, and all but one of the States have such commissions. In such small matters the detail should be left within the jurisdiction of the State authorities, who know the situation, know the conditions, and know how best to meet the needs." (*Ibid.*)

The purpose of what is now Section 3(5), Congressman Esch elaborated, was applicable to terminals in large cities. "Due to the prohibitive cost of land, it is necessary to get a greater use out of existing terminals by giving to some regulatory authority, like the Interstate Commerce Commission, the right to order the joint use of such terminals." Otherwise, he added, jurisdiction as to depots "should be left, as we leave it, to the regulatory bodies of the several States." (*Ibid.*)

The McClintic amendment, which would have prohibited the abandonment of depots used jointly with another railroad without prior application to, and approval by, the Commission, was rejected by a voice vote of the House (58 Cong. Rec. 8582). This action is persuasive that Congress did not intend to achieve the same result in Section 1(18). In view

of the floor leader's statement as to the purpose of Section 1(22) (pp. 13-14, *supra*), the rejection of the amendment cannot be dismissed as the Court below dismissed it (Appendix D, *infra*, p. 46a), as relevant only to the abandonment of buildings. The floor leader's statements and the argument on the floor of the House demonstrate that, except for the discretionary ICC authority in Section 3(5) to require joint use of terminal facilities in limited circumstances,[18] Congress intended to leave the matter of abandonment of stations and terminal facilities to the discretion of the railroads, subject only to such regulation as the states themselves might see fit to impose. This intention was reaffirmed as recently as 1958 when substantial amendments were made in other parts of the Act, but a proposal to require approval of station abandonments was rejected. See H. Rep. No. 1922, 85th Cong., 2d Sess., p. 12. In short, Congress did not mean the requirement of ICC approval of the abandonment of a "line of railroad," in Section 1(18) to encompass what was ordinarily considered to be "terminal track"; such track was intended by Congress to be exempt under Section 1(22).

c. Four years after the enactment of Section 1(18) and (22), this Court had occasion to construe those provisions in *Railroad Commission* v. *Southern Pacific Co.*, 264 U.S. 331 (1924), a decision with which the decision below conflicts in

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[18] As reported and passed by the House, this section authorized the Commission to "require the terminals" of any carrier subject to the Act "to be open to the traffic of other such carriers." H.R. 10453, Nov. 8, 1919, Sec. 405 (MacVeagh, *supra*, p. 616); H.R. 10453, Nov. 17, 1919, as printed in the Senate (MacVeagh, *supra*, p. 645). The Senate substantially changed this language so to authorize the Commission "to require the use of any such terminal or other facilities including mainline track or tracks for a reasonable distance outside of such terminals." H.R. 10453, Dec. 20, 1919, as amended by the Senate, Sec. 11(b) (MacVeagh, *supra*, p. 667). The final language, more closely akin to the Senate version, was agreed upon in conference. See H. Rep. 650, 66th Cong., 2d Sess., Feb. 18, 1920 (MacVeagh, *supra*, p. 252).

principle. In that case, this Court held that the application of Section 1(18) to the construction or abandonment of a union station and its access track turns on whether an expensive extension or abandonment of main line is involved.

The *Southern Pacific* case was one of three cases, arising in the state courts shortly after the enactment of the Transportation Act of 1920, which required a precise determination by the courts and the Interstate Commerce Commission of the dividing line between State and Federal jurisdiction with respect to the construction and abandonment of terminals. In each case a state agency had ordered the construction of a new union station—one in Los Angeles, one in Selma, North Carolina, and one in Oklahoma City. In each case, the railroads contested the state orders on the ground that Sections 1(18) and 3(5) of the Interstate Commerce Act gave the Interstate Commerce Commission exclusive jurisdiction with respect to such matters.

In the Los Angeles case, the California Supreme Court upheld the protesting railroads, ruling that the ICC had exclusive jurisdiction to order, approve or disapprove proposed station and track construction and abandonments. *Atchison, T. & S.F. Ry.* v. *Railroad Commission,* 190 Cal. 214, 211 Pac. 460 (1922). The California Railroad Commission then brought the case to this Court. Before it was briefed here, however, the North Carolina and Oklahoma Supreme Courts reached contrary conclusions in the Selma and Oklahoma City cases, the North Carolina court attaching particular significance to the rejection of the McClintic amendment. *North Carolina Corp. Comm.* v. *Southern Ry.,* 185 N.C. 435, 117 S.E. 563 (1923); *Chicago, R.I. & P. Ry.* v. *State,* 90 Okla. 173, 217 Pac. 147 (1923). The California Commission relied heavily on the Selma and Oklahoma decisions in its briefs in this Court.[19]

[19] In addition—indicating the importance of the case in defining the extent of federal jurisdiction—the National Association of Railway and

In its reply brief, the Southern Pacific advanced for the first time what ultimately became the *ratio decidendi* of this Court's decision. Quoting extensively from *Detroit & M. Ry.* v. *Boyne City, G. & A.R.R.*, 286 Fed. 540 (E.D. Mich. 1923), which had held the Section 1(22) exemption inapplicable where a "main line" was involved, Southern Pacific relied on the fact that the California Commission's order directly affected "mainline" tracks and hence was subject to the ICC's jurisdiction:

> "In the case at bar not only will a considerable portion of the main line of the Southern Pacific Company have to be 'abandoned' but the main lines of all of the three companies concerned will have to be 'extended' if they are required to construct a union passenger terminal station."[20]

This Court affirmed the California judgment setting aside the state Railroad Commission's order. However, it did so on far narrower grounds than the California court had adopted. Two facts controlled the Court's decision: first, the state agency's order to build a new union station involved the abandonment and construction of "main" tracks, and second, the project involved major expenditures by the railroads affected. Those factors, in the Court's judgment, required prior Commission approval under Sec-

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Utilities Commissioners filed a brief *amicus curiae* on behalf of the railroad commissions of 30 states, in which it cited the conflict between the Los Angeles decision and those in the Selma and Oklahoma City cases, and asked this Court for a "clear declaration" on the jurisdictional issues. Brief Amici Curiae, No. 283, Oct. Term 1923, pp. 36-37. In defense of the California Commission's exclusive jurisdiction, NARUC dealt extensively with both the legislative history of the Transportation Act of 1920, particularly the McClintic amendment (*id.* at 14-20), and the decisions by the North Carolina and Oklahoma Supreme Court (*id.* at 28-36).

[20] Reply Brief of Respondent Southern Pacific Co. to Brief Amici Curiae, filed November 19, 1923, pp. 16-21.

tion 1(18) for the abandonment and construction of the main tracks involved.

The California court had not sought to distinguish between "main" tracks and the "spur", "switching" and "side" tracks involved. This Court, however, in its statement of the facts laid considerable emphasis on the "main track" of each railroad that would have to be abandoned and constructed. 264 U.S. at 340. The sole authority for ICC jurisdiction, it indicated, rested in the certificate requirements of Sections 1(18)-(21). "Such a certificate", the Court concluded, is "necessary in the construction of a new interstate union station, which involves a substantial and expensive extension of the *main tracks* or lines of interstate carriers who theretofore have maintained separate terminals.". *Id.* at 344.

The Court then explained why the Section 1(22) exemption was inapplicable. Brushing aside the Railroad Commission's argument based on the legislative history of the Transportation Act of 1920, that *all* terminal track came within this exemption, the Court found "a palpable distinction between the *main tracks* of an interstate carrier, and its spur, industrial, switching or side tracks, . . . [which] shows the legislative intention to retain any substantial change in the *main tracks* within the control of the Interstate Commerce Commission."[21] *Id.* at 345.

In answer to the Railroad Commission's argument based on the Selma case, the Court remarked: "One might, too,

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[21] Recognizing that mainline tracks were indisputably involved, the Railroad Commission had also cited the ICC's decisions holding that the relocation of main line track for short distances did not constitute a "construction" and "abandonment" requiring a certificate under Section 1(18). *Philadelphia, N. & N.Y.R.R.*, 67 I.C.C. 252 (1921); *Pearl River Valley R.R.*, 67 I.C.C. 748 (1921). The Court distinguished these cases, remarking, "it may well be that a mere relocation of a main track of an interstate carrier which does not involve a real addition to, or abandonment of, main tracks and terminals, or a substantial change in destination, does not come within the paragraphs 18 to 21." 264 U.S. at 345.

readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of *main* tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the State for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers." *Ibid.* (In the Selma case, no abandonment or construction of main line track had been involved, only the abandonment of an old station building and the construction of a new union station at the point where the main lines of the affected railroads crossed. See *North Carolina Corp. Comm.* v. *Southern Ry.*, 185 N.C. 435, 117 S.E. 563 (1923).)

"But," the Court's opinion continued, "there is a great difference between such relocation of tracks or local union stations and what is proposed here. The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind. They come within paragraphs 18 to 21 * * * and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission." 264 U.S. at 346. The Court thereupon concluded, "We think it clear that in such an extension of *main lines* with their terminals the Interstate Commerce Commission is required by the act to make a finding that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public." *Id.* at 347.

The decision of the Supreme Court clearly confirmed the absence of ICC jurisdiction in the Selma case, where neither the abandonment nor the extension of main track was involved. It left for the Commission itself to decide whether

the abandonments and extensions of track in the Los Angeles and Oklahoma City cases, where abandonment and extension of main tracks were involved, constituted a "substantial change in the main tracks within the control of the Interstate Commerce Commission."

The Los Angeles and Oklahoma City cases reached the Commission for decision on the Section 1(18) issues in mid-1925. In its decisions, the Commission—which by then included former Congressman Esch—emphasized that its powers under Section 1(18) as enacted by Congress and construed by this Court in the *Southern Pacific* case were limited to cases involving substantial extensions and abandonment of "main" track. *Los Angeles Passenger Terminal Cases,* 100 I.C.C. 421, 428-429, 459-60 (1925); *Corporation Commission* v. *Atchison, T. & S.F. Ry.,* 101 I.C.C. 647, 650-53 (1925). In the *Los Angeles Passenger Terminal Cases* the Commission expressly approved the holding by the North Carolina Supreme Court in the Selma case that the transfer from one station to another located on the railroad's "main line" was clearly exempt from Section 1(18), and held that where the change to a new station involved an "expensive extension of the main tracks" and, conversely, an abandonment of former "main tracks", ICC approval under Section 1(18) was a prerequisite to the change. The *Oklahoma City Union Station Case* (*Corporation Commission* v. *Atchison, T. & S. F. Ry., supra*) held that the ICC's sole "means of control" over the construction or abandonment of passenger stations rested on the requirement that there be a substantial extension or abandonment of "main tracks" and that in consequence neither the abandonment of joint use of a former station nor the construction of a new station was within the Commission's jurisdiction under Section 1(18) where no new mainline construction was involved and the track being abandoned was a "stub-end" or "spur."

The limits of ICC's jurisdiction over the abandonment

or construction of stations were clearly drawn in these cases. Whether abandonment and construction of terminal track requires ICC approval was the precise question at the heart of this Court's opinion in the *Southern Pacific* case, and necessarily so. The California court's opinion had swept all of the various track abandonments and extensions involved into the ICC's jurisdiction. This course was incompatible with the clear language of the act and its legislative history. This Court thereupon substituted what it considered to be the proper test: the construction of track to a terminal was *within* the Commission's jurisdiction if it involved "a substantial and expensive extension of the *main* tracks." 264 U.S. at 344. Otherwise, if it were but a minor relocation of main track or if no main track were involved, the Commission had no jurisdiction under Section 1(18). And this is precisely the interpretation that the Commission itself put on the decision in its subsequent disposition of both the Los Angeles and Oklahoma City cases. Thus, there is a clear conflict in principle between the decision below, on the one hand, and this Court's decision in the *Southern Pacific* case (and the Commission's own decisions in the related cases), on the other.

d. The decision below conflicts with the settled construction of Section 1(18) to which the Interstate Commerce Commission itself has adhered for over 40 years, ever since its decision in the *Los Angeles Passenger Terminal Cases*, 100 I.C.C. 421 (1925).

Since the Transportation Act of 1920 was enacted, over 400 million train-miles of passenger train service have been discontinued in this country. As of 1963, only 189 million passenger train-miles were still being operated.[22] If, in the

[22] See *Railroad Passenger Train Deficit*, 306 I.C.C. 417, 440 (1959); 78th Annual Report of the Interstate Commerce Commission, p. 146 (1964). During the year 1920, Class I Railroads operated 588 million train-miles in passenger service. I.C.C., *Statistics of Railways in the United States*, p. III 33 (1922).

discontinuance of over two-thirds of the nation's passenger train service since Section 1(18) became effective—necessarily involving the abandonment of many hundreds of passenger stations[23]—there existed legal precedents that abandonment of a passenger station or its track required prior approval by the ICC, where no mainline track was involved, the listing of citations would fill a book. However, the opinions below offer no such citations.[24]

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[23] In 1920, passenger train service was provided over 175,226 miles of road by Class I line-haul railroads. I.C.C., *Statistics of Railways in the United States*, Table 55-B (1941). The miles of road over which such service was provided declined to 82,036 by the first half of 1964. 78th Annual Report of the Interstate Commerce Commission, p. 146 (1964).

[24] Among the cases cited by the Court of Appeals (Appendix D, *infra*, p. 45a), two establish no more than that terminal companies are carriers within the meaning of the Interstate Commerce Act. *St. Joseph Union Depot Co.*, 133 I.C.C. 537 (1927); *Fort Worth Union Passenger Station Co.*, 97 I.C.C. 698 (1925). Petitioners do not quarrel with that proposition. *Atchison, T. & S.F. Ry.*, 224 I.C.C. 39 (1937), establishes that under the Act as it was then written an agreement for operation and control of such a carrier by others required ICC approval. The exception in Section 1(22) was not applicable to such an agreement. In *St. Louis, S.F. & T. Ry.*, 267 I.C.C. 30 (1946), the ICC's jurisdiction was not challenged. The assumption of jurisdiction over acquisition of trackage rights for the purpose of establishing passenger service to a city not then served by the carrier does not govern the relocation of terminals for existing service, nor does it apply to abandonments of terminal tracks, as shown by the fact that the trackage rights there authorized were later allowed to be relinquished without Section 1(18) approval. See *St. Louis-S.F. Ry.*, 307 I.C.C. 477 (1959). *Illinois Central R.R.*, 307 I.C.C. 493 (1959), 312 I.C.C. 277 (1960), 317 I.C.C. 502 (1962), *vacated sub nom. Norfolk & W. Ry.* v. *United States*, 241 F. Supp. 974 (E.D. Ohio 1965), *prob. juris. noted*, 382 U.S. 913 (Nov. 16, 1965) (Nos. 445, 448, 543, O.T. 1965), involving construction of new lines, extension of freight service, and acquisition of trackage rights for freight service into a distinct area not theretofore served by the applicants, is in no way analogous to the case at bar. The cases cited by the District Court (230 F. Supp. at 464, App. 187a, Appendix B, *infra*, pp. 18a-19a) are also not in point. No extension or abandonment of track was involved in *Boston Term. Co.*, 312 I.C.C. 373 (1960), only sale of the terminal building over which the ICC held that it had no jurisdiction. *Id.* at 376-379. The dictum that "'a line of railroad' does not cease to be such merely because it is called, or embraced within, a 'station,'" *id.* at 377, does not contradict petitioners' assertion in the text above. The dictum is correct when applied to mainline track. *Kansas*

On the contrary, the Commission has never, in a proceeding in which its jurisdiction was contested, asserted jurisdiction under Section 1(18) over a station abandonment which did not also involve the abandonment of mainline track. And, it has repeatedly dismissed, for want of jurisdiction, applications for Section 1(18) authority with respect to station abandonments which did not involve mainline track.

Thus, in the *Oklahoma City Union Station Case* (*Corporation Commission* v. *Atchison, T. & S.F. Ry., supra*), the Commission dismissed the proceedings with respect to all of the affected railroads except the "Frisco" on the merits; with respect to the "Frisco," which would not have been required to extend or abandon mainline tracks but only to build a "stub-end" access track several blocks long, the proceeding was dismissed on the ground that an ICC certificate was not required. 101 I.C.C. at 656. The Commission has also dismissed applications for Section 1(18) authority under similar circumstances in *Kansas City S. Ry.*, 94 I.C.C. 691 (1925); *Boston & A.R.R.*, 312 I.C.C. 458, 461 (1961); and *Seaboard Air Line R.R.*, 312 I.C.C. 507, 511 (1961), *vacated on other grounds sub nom. Railway Labor Executives' Ass'n* v. *United States*, 216 F. Supp. 101 (E.D. Va. 1963).

City Southern Ry., 94 I.C.C. 691 (1925), involved relocation of mainline tracks. *Cf.* note 21, *supra*. The phrase "terminal tracks" used in the opinion, *id.* at 693, apparently reflects the fact that the segment involved was at the end of the line and a station building was there. No contention based on the Section 1(22) exception was even made. The opinion in *Chicago, R.I. & P. Ry.*, 131 I.C.C. 421 (1927), uses "terminal" to refer to "terminal tracks," *id.* at 429, and the "terminal tracks" in question were the carrier's only access to existing station facilities in Denver; by abandoning those tracks, the carrier admittedly would have been left unable to provide railroad service to Denver, at least for a while. Thus the "terminal tracks" performed the essential function of mainline tracks for this carrier. In contrast, railroad passenger service at Memphis continued without interruption after the Union Station closed, and petitioners continue to use their main lines as before.

Moreover, whenever the last passenger train is discontinued on a particular route, every passenger station on the route is necessarily "abandoned." Yet, in a number of recent decisions involving hundreds of passenger stations, the Commission has approved the discontinuance of carriers' last passenger trains under Section 13a of the Interstate Commerce Act, added by 72 Stat. 571 (1958), 49 U.S.C. § 13a, without intimating that Section 1(18) approval should also be obtained.[25]

Thus, the Cotton Belt (which ceased using Union Station on November 1, 1952) gradually eliminated all of its passenger train service between World War II and 1959, successfully invoking ICC jurisdiction under Section 13a of the Interstate Commerce Act to discontinue the last remnants of its former St. Louis-Dallas passenger route. *St. Louis S.W. Ry.*, 307 I.C.C. 639 (1959). The Commission's opinion noted that Cotton Belt's passenger train operations between Texarkana, Texas, and Dallas, Texas, had been discontinued prior to 1956, between Pine Bluff, Arkansas, and Texarkana on December 21, 1957, and into and out of Union Station in St. Louis, Missouri, in 1958. *Id.* at 640-41. A review of the Commission's Section 1(18) decisions reveals that no prior ICC approval had been obtained to abandon operations at any of the many passenger stations involved. Further, the Commission granted Section 13a authority to the Cotton Belt to discontinue its trains completely between East St. Louis, Illinois, and Pine Bluff, Arkansas, which involved the Cotton Belt's abandoning the

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[25] Such decisions cannot be distinguished on the ground that Section 13a approval obviates the need for Section 1(18) authority, for the Commission has held that where an "abandonment" subject to Section 1(18) will result, Section 1(18) authority must be sought and obtained before the Commission will act on a Section 13a application. *Baltimore & O.R.R.*, 317 I.C.C. 371, 387-389 (1962) (abandonment of mainline track of Cleveland Union Terminal, a "through" station, see *Cleveland Passenger Terminal Case*, 70 I.C.C. 342, 659 (1921)).

use of twenty-three passenger stations, without mentioning Section 1(18).

Similarly, on one recent occasion the Chicago Great Western sought Section 13a authority to discontinue passenger trains serving some 50 passenger stations, including union depots in three cities. Later, Chicago Great Western sought Section 13a authority to discontinue passenger trains serving 66 stations, including joint depots in three cities. In both cases, the Commission granted the requested authority without suggesting that Section 1(18) approval was also necessary for the abandonments. *Chicago Great Western Ry.*, 317 I.C.C. 99 (1962); *Chicago Great Western Ry.*, ICC Finance Docket No. 23581 (August 19, 1965). And when the Chicago & Northwestern sought permission to discontinue its last passenger trains to St. Paul and Minneapolis, the state regulatory commission moved to dismiss the application for failure to request Section 1(18) authority. Yet the Commission summarily denied the motion and granted the Section 13a permission requested. *Chicago & N.W. Ry.*, 320 I.C.C. 85, 92 (1963).[26]

In short, until this case, the Commission has, consistently adhered to its decision in the *Los Angeles Passenger Terminal Cases*, that it has no jurisdiction over passenger station construction or abandonments in the absence of a substantial extension or abandonment of "main tracks." The

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[26] The Commission's attitude was the same even before the enactment of Section 13a. Thus, in 1926, when the Pennsylvania Railroad terminated Baltimore & Ohio's right to operate into Penn Station via the Hudson River tunnel, the B. & O. arranged to share the Central of Jersey's passenger terminal in Jersey City. Although the ICC asserted jurisdiction to approve the trackage right agreement by which the B. & O. operated from Philadelphia to Jersey City, it never once intimated that the B. & O. had violated Section 1(18) in abandoning its operations into Penn Station without Commission approval. See *Baltimore & O.R.R.*, 138 I.C.C. 171 (1928); *Transfer of Passengers Through New York, N.Y., & Newark, N.J.*, 165 I.C.C. 497, 498 (1930).

decision below is squarely in conflict with that settled administrative constructon.

e. Whether the decision below is right—and for reasons indicated above we believe it is not—is a question of great importance to the nation's railroads. If the decision below is right, a railroad must obtain Section 1(18) approval whenever it discontinues passenger operations at a station where passengers are loaded or unloaded from terminal tracks which the railroad will no longer use. (This is true whether or not other railroads continue to use the tracks for terminal operations, for the question of abandonment turns on the use to which any particular railroad puts the tracks. *Thompson* v. *Texas Mexican Ry.*, 328 U.S. 134, 144 (1946).) If that is now to be the law, virtually every railroad in the United States will suddenly find itself in violation of the Interstate Commerce Act.

As noted above, in the years since Section 1(18) was enacted, passenger service has been discontinued by any number of railroads over thousands of miles of track at hundreds of different stations without Section 1(18) approval. Some terminal track must have been involved in many of these abandonments. If the decision below is right, countless "'abandonments'' for which ICC approval was required have occurred without such approval. If, despite 45 years of law to the contrary, those past abandonments are now to be declared to have been unlawful—subject to both civil restraint and criminal punishment—and similar abandonments in the future are no longer to be exempt under Section 1(22), it should be this Court, or indeed the Congress, which so declares.

2. *The Section 5(2) issue—the second question presented —should be reviewed by this Court.*

In terms of the legal issues involved, the second question presented by the petitioners, concerning the application of Section 5(2) of the Interstate Commerce Act, is virtually identical to the first question presented, concerning the application of Section 1(18).[27]

As previously indicated, Section 1(18) provides that no carrier by railroad "shall abandon all or any portion of a line of railroad, or the operation thereof," without Commission approval, but by virtue of Section 1(22) that provision does not apply to the "abandonment of spur, industrial, team, switching, or side tracks, located . . . wholly within one State." Whether "stub-end" station tracks like those at the Memphis Union Station, used only for the loading and unloading of passengers and the switching, storage, cleaning and repair of cars, are exempt as "spur, . . . team, switching, or side tracks" is the issue presented by petitioners' first question.

Similarly, Section 5(2), as supplemented by Section 5(4), requires Commission approval "for a carrier by railroad to acquire trackage rights over, or . . . joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto," but by virtue of Section 1(18) that provision does not "prohibit the making of contracts between carriers . . . without the approval of the Commission, for the . . . use of spur, industrial, team, switching, or side tracks." And, whether "stub-end" station tracks like the switching tracks at the Illinois Central station, which under the new arrangements are used by the L&N only for the loading and unloading of passengers and

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[27] It should be noted that only the L&N and the Illinois Central are directly affected by the Section 5(2) issue.

the switching, storage, cleaning and repair of cars, are exempt as "spur, . . . team, switching, or side tracks" is the issue presented by petitioners' second question.

In view of the virtual identity of the legal issues presented by the two questions, we submit that review of the Section 5(2) question is warranted if certiorari is granted with respect to the Section 1(18) question.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Statutes Involved

Interstate Commerce Act, § 1(18)-(20), 41 Stat. 477-478 (1920), as amended, 49 U.S.C. § 1(18)-(20):

(18). *Extension or abandonment of lines; certificate required; contracts for joint use of spurs, switches, etc.* No carrier by railroad subject to this chapter shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this chapter over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment. Nothing in this paragraph or in section 5 of this title shall be considered to prohibit the making of contracts between carriers by railroad subject to this chapter, without the approval of the Commission, for the joint ownership or joint use of spur, industrial, team, switching, or side tracks.

(19). *Application for certificate of Commission; notice and hearing.* The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this chapter shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof

to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

(20). *Issuance of certificate by Commission; unlawful extension or abandonment of lines.* The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000

or by imprisonment for not more than three years, or both.

Interstate Commerce Act, § 1(22), 41 Stat. 478 (1920), 49 U.S.C. § 1(22):

(22). *Construction, etc., of spurs, switches, etc., within State.* The authority of the Commission conferred by paragraphs (18) to (21) of this section, both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.

Interstate Commerce Act, § 5(2), 48 Stat. 217 (1933), as amended, 49 U.S.C. § 5(2):

(2). *Unifications, mergers, and acquisitions of control.* (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b) of this paragraph—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage

rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subdivision (a) of this paragraph, the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 305(e) of this title), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subdivision (a) of this paragraph and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: Provided, That if a carrier by railroad subject to this chapter, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6) of this section, is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage

in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction, under the provisions of this paragraph, the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

* * * * * * *

(f) As a condition of its approval, under this paragraph, of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

Interstate Commerce Act, §5(4), 48 Stat. 218 (1933), as amended, 49 U.S.C. §5(4):

(4) *Control effected by other than prescribed methods.* It shall be unlawful for any person, except as provided in paragraph (2) of this section, to enter into any transaction within the scope of subdivision (a) of paragraph (2) of this section, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (5) of this section, the words "control or management" shall be construed to include the power to exercise control or management.

Interstate Commerce Act, §5(8), 48 Stat. 219 (1933), as amended, 49 U.S.C. §5(8):

(8). *Jurisdiction of injunctions, etc., against violations of section or orders.* The district courts of the United States shall have jurisdiction upon the complaint of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

APPENDIX B

Memorandum Decision of the United States District Court for the Western District of Tennessee

This is an action filed by the Interstate Commerce Commission (I. C. C.) against several railroads and a railroad passenger terminal operating company seeking an injunction requiring three of these railroads to continue to use this abandoned terminal and to cease using certain other passenger terminals. The City of Memphis (City) and the Railway Labor Executives' Association (Labor Association) have intervened as additional plaintiffs.

Plaintiffs rely on 49 U. S. C., § 1 (18) which, in general, requires a certificate of public convenience and necessity before a line of railroad may be abandoned. They also rely on § 5 (2) and § 5 (4) which provide, in general, that I. C. C. approval must be obtained before trackage rights on a line of railroad may be acquired.

For jurisdiction, plaintiffs rely on § 1 (20), which authorizes the issuance of an injunction to prohibit an abandonment contrary to the provisions of § 1 (18), and rely on § 5 (8), which authorizes the issuance of an injunction to prohibit an acquisition of trackage rights contrary to the provisions of § 5 (2) and § 5 (4).

Plaintiffs seek both a temporary and a permanent injunction, and a hearing on the application for a temporary injunction has been had. At this hearing, defendants took the position that I. C. C. approval of what has been done was not necessary and that, in any event, a temporary injunction should not issue in this action.

The affidavits which have been filed and the evidence introduced at the hearing establish the relevant facts without dispute.

The defendant Memphis Union Station Company (Union Station), which owns and has operated this passenger terminal in the City, was formed in 1909, its stock being owned by the defendant Louisville & Nashville Railroad Company (L & N), the defendant Southern Railway Com-

pany (Southern), the defendant Missouri Pacific Railroad Co. (Mo Pac), and the defendant St. Louis Southwestern Railway Co., which has been referred to in the record and which will be referred to herein as the "Cotton Belt". The terminal building, tracks and other facilities were completed in 1912. Thereafter these railroads, as tenants of their subsidiary terminal company, had used this passenger terminal down to around April 1, 1964, except that the Cotton Belt ceased operating passenger trains into the City in 1952.

The Union Station fronts on Calhoun Avenue to the north and stub-end terminal tracks, which Union Station used for receiving and discharging passengers and mail, for cleaning and minor repairs to passenger trains, and for switching and making up of passenger trains, are immediately to the south of the terminal building. There are about twelve of these tracks, all of which run north and south, each with a platform and overhanging shed. Immediately to the east of and parallel to these tracks is another series of tracks used for storage of cars and heavier repairs.

Passenger trains using the Union Station approach on a group of main line east-west tracks immediately to the south of the terminal property, running perpendicular to the terminal tracks. The Southern and L & N passenger trains, which enter the City from the east, run to the west of the Union Station on their main line tracks and then back into the station. The defendant Union Railway Co., a wholly owned "belt-line" subsidiary of Mo Pac, owns two of these east-west main line tracks. Mo Pac trains, which enter the City from the west, run to the east of the station on one of these Union Railway tracks and then back into the station.

These main line east-west tracks to the south of the Union Station terminal are joined with the stub-end terminal tracks by two sets of lead tracks which are, looking from the south, arranged in an inverted Y. This arrangement enabled Southern and L & N trains to back in from the west over the west branch of the Y and to depart over the east branch and enabled Mo Pac trains to back in from

the east over the east branch of the Y and to depart over the west branch.

To handle trains passing the Union Station on these main line tracks and to handle passenger trains backing in and departing from the station, an interlock system is used. Simply stated, the interlock is a system of centrally controlled switches and signals. These switches and signals are located on these east-west main line tracks and also on the tracks on the terminal property. To illustrate how the interlock is used, a Southern passenger train approaching from the east enters the interlock area, continues to the west until its rear car is clear of the interlock switches, then a series of switches is thrown and signals are set so that the train may be backed across other main line tracks into the west branch of the Y lead tracks and then into the appropriate terminal stub-end track.

The interlock switches are electro-pneumatically controlled from a tower which has been owned and operated by the Union Station and receives its electricity and air from a power plant also owned and operated by the terminal company.

Subsequent to January 1, 1964, the I. C. C. received letters from employees of Union Station, advising that Southern, L & N and Mo Pac planned to terminate operations and their employment there effective April 1, 1964. Accordingly, on February 27, 1964, the I. C. C. directed letters to each of these defendant railroads, inquiring as to their intentions.

Thereafter, in an exchange of letters, Mo Pac advised the I. C. C. that the lease of the tenant lines at Union Station would expire on April 1, that Mo Pac intended to use passenger terminal facilities of its subsidiary Union Railway, and that in its opinion approval of this move by the I. C. C. was not necessary. L & N advised the I. C. C. that it likewise intended to end operations at Union Station with the expiration of the lease, which, in its opinion, did not require I. C. C. approval, and that it intended to use the terminal facilities of the defendant Illinois Central Railroad Co. (Illinois Central). Southern did not respond

in writing to the I. C. C. initial inquiry or other correspondence, but counsel for Southern advised I. C. C. verbally that if Mo Pac and L & N terminated operations at Union Station, it would do the same and would make use of other terminal facilities.

The I. C. C. advised Mo Pac, Southern and L & N that in its informal opinion approval was necessary and invited them to apply for approval and to make a contemporaneous motion to dismiss the application for lack of jurisdiction.

By copies of this correspondence sent to them, Union Station, Union Railway, Cotton Belt and Illinois Central were informed of the position of the I. C. C. and of the Southern, L & N and Mo Pac. Cotton Belt advised the I. C. C. that it was not involved in the controversy because it had not operated passenger trains into the City since 1952 and was only a stockholder of Union Station.

Thereafter, on or about April 1, 1964, Southern, Mo Pac and L & N terminated operations at Union Station.

Southern began using, as a passenger terminal, a building and adjoining tracks which it had last used for that purpose over fifty years ago but which it has been using and is still using as a freight depot. This building is 1.8 miles from Union Station. Mo Pac began routing its passenger trains over tracks to a building which it had existing rights to use through its subsidiary Union Railway. This building has not been used as a passenger terminal in over fifty years. It is likewise located on Calhoun Avenue and about four blocks west of Union Station. L & N began using the terminal facilities of Illinois Central, which are comparable to those of Union Station. For many years these facilities and Union Station have been the only passenger terminal facilities in use in the City. The Illinois Central terminal is likewise located on Calhoun Avenue (about two blocks west of Union Station), and its terminal stub-end tracks also come in from the south and are connected with these same east-west main line tracks. To enter the terminal, L & N trains, approaching from the east on its main line, run past Union Station and continue on its main line to a point west of the Illinois Central terminal. Then the trains are backed, using a

system of switches, off the main line and onto the appropriate stub-end track in the terminal. To accomplish this change of terminals, the only trackage rights necessary for L & N to acquire were rights over a lead track from its main line to the stub-end terminal tracks and rights to use the stub-end tracks.

Shortly after the termination of operations at Union Station, 120 of its employees were discharged, of whom about 75 have not obtained other employment. It is in behalf of these discharged employees that the Labor Association has intervened.

On March 25, the Tennessee Public Service Commission (Commission) issued an order to Southern, L & N, Mo Pac Cotton Belt and Union Station to show cause why their intended cessation of the use of the Union Station terminal would not constitute a violation of Tennessee statutes and the rules of the Commission. On April 3, a hearing was had on the show cause order and on April 7 the Commission ordered restoration of service at the terminal by April 12. By proper appellate proceedings in the state Chancery Court, this order was reviewed and on April 13 and 14 that Court held (for various reasons) that the order of the Commission was invalid as to Mo Pac, Cotton Belt and Union Station, but it affirmed the order of the Commission as to L & N and Southern. On April 14, the Commission held Southern and L & N in contempt for failure to comply with its order. On April 27, a justice of the Tennessee Supreme Court granted the application of Southern and L & N for certiorari and supersedeas. L & N (and perhaps Southern) have applied to the Commission for approval of what they have done, but the Commission has deferred the hearing thereon, pending decision of this action in this court. The Commission has sought review in the Tennessee Supreme Court of the action of the Chancery Court in holding that its order is invalid as to Mo Pac, Cotton Belt and Union Station.

As indicated, the two broad issues presented for consideration at the hearing are: (1) whether I. C. C. approval was necessary before L & N, Mo Pac and Southern could cease passenger operations at Union Station and institute

service at other locations as they have done; and (2) whether, in any event, a preliminary injunction should issue.

Necessity of I. C. C. Approval

As also stated, plaintiffs rely on 49 U. S. C., § 1 (18), which requires I. C. C. approval before a line of railroad may be abandoned and § 5 (2) and § 5 (4), which require such approval before trackage rights over or joint use of a railroad line and terminals incidental thereto may be acquired. Applied to these facts, plaintiffs contend that, in ceasing operations at Union Station, Southern, L & N, Mo Pac and Union Station have abandoned a line of railroad and that, at least in the case of the L & N's use of Illinois Central facilities, there has been an acquisition of trackage rights over and joint use of a railroad line and terminal incidental thereto.

Defendants concede that § 1 (18), § 5 (2) and § 5 (4) are the applicable and determinative statutory provisions but contend that there has not been, within the meaning of these provisions, an abandonment or an acquisition.

It should be pointed out that the answers to these questions are determinative of the jurisdiction of the I. C. C. to hear and make an adjudication as to public convenience and necessity. And as the matter is before this court on an application by the I. C. C. for an injunction, it is solely for this court to determine whether the I. C. C. has jurisdiction. *Powell* v. *U. S.*, 300 U. S. 276 (1937).

Turning now to those provisions of Sec. 1 (18) which have to do with the abandonment of a line of railroad, and Sec. 5 (2) and Sec. 5 (4) which have to do with the acquisition of trackage rights over and joint use of a railroad line, we quote here the relevant parts of these sections:

"Sec. 1 (18) * * *

> * * * [N]o carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment. * * *"

"Sec. 5 (2) * * *

(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b) of this paragraph * * *

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto."

"Sec. 5 (4) * * *

It shall be unlawful for any person, except as provided in paragraph (2) of this section, to enter into any transaction within the scope of subdivision (a) of paragraph (2) of this section . . . * * * "

There are, however, specific exceptions to these provisions contained in the statutes. Sec. 1 (22) contains an exception to the requirement of Sec. 1 (18) that an abandonment have I. C. C. approval, which exception reads as follows:

"Sec. 1 (22) * * *

The authority of the Commission conferred by paragraphs (18) to (21) of this section, both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one state . . . * * * "

Sec. 1 (18) contains an exception to the requirement of Sec. 5 (2) and Sec. 5 (4) that an acquisition have I. C. C. approval, which exception reads as follows:

"Sec. 1 (18) * * *

* * * * Nothing in this paragraph or in Section 5 of this title shall be considered to prohibit the making of contracts between carriers by railroad subject to this chapter, without the approval of the Commission, for the joint ownership or joint use of spur, industrial, team, switching or side tracks."

Plaintiffs first argue that, in interpreting § 1 (18), § 5 (2) and § 5 (4), we should look to the whole statutory scheme for regulating railroads contained in Part I of 49 U. S. C. Then plaintiffs point out that Union Station, as a "common carrier by railroad," is subject to I. C. C. regulation in many respects and argue that it would be anomalous to hold that the I. C. C. may regulate in these respects and yet have no power to prevent the complete cessation of operations at the station.

Defendants concede that Union Station is a "common carrier by railroad" within the meaning of Part I and as such is subject to regulation in some respects. They contend, however, that this power to regulate in other respects is no indication of a Congressional intent to treat Union Station or its tracks as a "line of railroad" and vest the I. C. C. with the power to prohibit the cessation of operations over these tracks.

We believe that the substantial power admittedly vested in the I. C. C. to regulate Union Station, as a common carrier by railroad, is at least some indication of an intent to treat terminals and terminal tracks as part of a "line of railroad" under § 1 (18). For instance, under Sec. 3 (5) the I. C. C. is vested with the authority under some circumstances to order one common carrier by railroad to allow another to use jointly its terminal facilities. Under Sec. 26 the I. C. C. is vested with authority to require any "common carrier by railroad," which is expressly defined in § 26 (a) to include "any terminal or station company," to install block signal systems, interlocking, automatic train stop and other similar appliances. Under Sec. 6 the I. C. C. is vested with authority to require "every common carrier" to file tariffs setting forth their "rates, fares and charges." The Union Station Company has a tariff on file with the I. C. C. setting forth its charges for "redcap service", pursuant to this section. Sec. 20 (a) (12) prohibits an officer or director of a carrier from serving in such capacity with another common carrier without approval by the I. C. C. Officers and directors of the Union Station Company have acquired authorization under this section. Under Sec. 20 (1) (2) (3) (9) the I. C. C. is author-

ized to require reports from railroad terminal companies. The Union Station has filed annual reports in compliance with this section. To reiterate, it seems unlikely that a common carrier by railroad, subject to such extensive regulation under other provisions of the Act, was intended to be allowed to abandon all of its operations without approval of the I. C. C. pursuant to Sec. 1 (18).

We understand the defendants' argument, with respect to Sec. 1 (18) is, in outline, as follows. The words "line of railroad", construed in the light of the limitations in Sec. 1 (22), mean "main line tracks" of railroad. Therefore, they argue that even if the Union Station tracks are not "spur" or "switching", etc., tracks, their abandonment is nevertheless not within the jurisdiction of the I. C. C. since they are not "main line tracks." Alternatively, defendants argue that Union Station tracks are spur or switching tracks and therefore come squarely within the exception contained in Sec. 1 (22).

In addition to relying on the entire statutory scheme, contained in Part I of the Act, for regulating common carriers, we understand the plaintiffs' further argument, with respect to Sec. 1 (18) is, in outline, as follows. The words "line of railroad" cover all trackage except that specifically excluded by Sec. 1 (22) and the Union Station tracks are not spur or switching tracks and therefore are not excluded by Sec. 1 (22). Alternatively, plaintiffs argue that even if the words "line of railroad" mean "main line tracks," the Union Station tracks are actually main line tracks.

While we think it is useful to define the arguments of the parties in general terms, as we have just done, we also think that it is important to point out that the reasoning of the adjudicated cases does not necessarily fit into this analysis of plaintiffs or defendants.

There are other provisions in Part I of the Act which give aid in construing the words "line of railroad" in Sec. 1 (18) and the words "spur" and "switching" in Sec. 1 (22).

In Sec. 1 (3) (a) the term "railroad" is defined as including ". . . all switches, spurs, tracks, terminals and terminal facilities . . . freight depots, yards and grounds . . ." It

therefore appears that the Act recognizes terminals and terminal facilities as a category separate from spurs and switches. This is an indication that terminal tracks are not meant to be excluded from I. C. C. jurisdiction by Sec. 1 (22). Furthermore, the fact that the statute thus defines "railroad" as including "terminals" and "terminal facilities" is at least some indication that terminals or terminal tracks may be a part of a "line of railroad" within the meaning of Sec. 1 (18). See *Abandonment of Line by Chicago, etc. Ry. Co.*, 131 I. C. C. 421 (1927).

In Sec. 1 (15) (c) and Sec. 3 (5) of the Act the I. C. C. is vested with authority, under certain circumstances, to require joint use of ". . . terminal facilities, including main line track or tracks for a reasonable distance outside such terminal . . ." Again, we see that terminal facilities are recognized as a separate category for regulatory purposes. Also, we see that "main-line tracks" are likewise recognized as a separate statutory category, indicating that they are not the same as a "line of railroad." If "line of railroad" does not mean the same thing as main line track, certainly it must be deemed to be a broader and more inclusive term.

A leading case in this area is *Railroad Commission of California v. Southern Pacific Co.*, 264 U. S. 331 (1924), which is relied upon by both plaintiffs and defendants. There the Railroad Commission ordered three railroads to construct in Los Angeles a new union terminal and to move their passenger operation to that terminal when constructed. The railroads attacked the order of the Railroad Commission in the California courts, contending that compliance would constitute an abandonment under Sec. 1 (18) and therefore I. C. C. approval would be required. The California Supreme Court held that the railroads need not comply for the reason asserted by the railroads, and the Supreme Court of the United States, for the same reason, affirmed.

There is language in this opinion to support defendants' contention that Sec. 1 (18) does not apply unless main line track is to be abandoned, but there is also language in the opinion that Sec. 1 (18) applies if a passenger terminal and its tracks are to be abandoned. However, since main line

track was admittedly involved, it was clear without question that Sec. 1 (18) was applicable and therefore any discussion as to whether main line track must be involved is *dicta*.

An example of language in the opinion supporting defendants' contention may be found at page 345:

> "This is a palpable distinction between the main tracks of an interstate carrier, and its spur, industrial, switching, or side tracks, and shows the legislative intention to retain any substantial change in the main tracks within the control of the Interstate Commerce Commission. It may well be that a mere relocation of a main track of an interstate carrier which does not involve a real addition to, or abandonment of, main tracks and terminals, or a substantial change in destination, does not come within ¶¶18 to 21. One might too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the state for the public convenience, and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers."

An example of language supporting plaintiffs' contention may be found at pages 343 and 344:

> "It is obvious from the foregoing that Congress intended to place under the superintending and fostering direction of the Interstate Commerce Commission all increased facilities in the matter of distribution of cars and equipment and in joint terminals, in the exchange of interstate traffic and passengers between railways so as to make it prompt and continuous. It not only provides for the temporary expropriation of terminals and main track of one railway to the common use of one or more other railways in an emergency, but it also con-

templates the compulsory sharing of one company's terminals with one or more companies as a permanent arrangement. This is a drastic limitation of a carrier's control and use of its own property in order to secure convenience and despatch for the whole shipping and traveling public in interstate commerce. It gives to the Interstate Commerce Commission the power and duty, where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot."

We think a careful reading of this entire opinion will make it clear that the Court was not considering the precise question whether abandonment of terminal track requires I. C. C. approval.

The courts have held that the exceptions contained in Sec. 1 (22) should be strictly construed. *Piedmont etc. Ry Co.* v. *I. C. C.*, 286 U. S. 299 (1932); *Lancaster et al.* v. *Gulf etc. Ry Co.*, 298 Fed. 488 (S. D. Tex., 1924); *Chicago etc. Ry. Co* v. *Northern Pacific Ry. Co.*, 120 F. Supp. 710 (W. D. Wash., 1954). In the *Piedmont* case, it is said at page 311:

"The Transportation Act was remedial legislation and should therefore be given a liberal interpretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended."

Even where an exception contained in Sec. 1 (22) was on its face clearly applicable to proposed construction of trackage, the Supreme Court held the I. C. C. had jurisdiction since ". . . its purpose and effect are . . . of national concern." *Texas & Pacific Ry. Co.* v. *Gulf etc. Ry. Co.*, 270 U. S. 266 (1926) at page 278.

The I. C. C. has ruled on several occasions that while Sec. 1 (18) does not necessarily give it jurisdiction with respect to abandonment of certain terminal buildings as such, it has also ruled that it has jurisdiction with respect to abandonment of terminal trackage. For example, in *Boston Terminal Co. Reorganization*, 312 I. C. C. 373 (1960), the I. C. C., in holding that it did not have jurisdic-

tion to grant or deny approval of the sale and leaseback of a terminal building where the building would continue in use as a terminal building, was careful to point out that its earlier holding in another case "was not a categorical holding that all stations, whatever their character and relation to transportation, are outside the authority granted by § 1 (18); for 'a line of railroad' does not cease to be such merely because it is called, or embraced within, a 'station.'"

The other case referred to by the I. C. C. in the *Boston Terminal* opinion was *Public Convenience Application of Kansas City etc. Ry. Co.*, 94 I. C. C. 691 (1925), where the I. C. C. ruled that it had no jurisdiction with respect to abandonment of a depot building but did have jurisdiction with respect to abandonment and construction of "terminal tracks." In *Abandonment of Line by Chicago etc. Ry. Co.*, 131 I. C. C. 421 (1927), the I. C. C. ruled that it had jurisdiction with respect to abandonment of terminal tracks and apparently even terminal buildings.

The I. C. C. ruling that most strongly supports defendants' position, upon which ruling defendants have heavily relied since the beginning of this controversy, is *Boston and Albany Ry. et al. Abandonment*, 312 I. C. C. 458 (1961). Involved there was the main line trackage, consisting of four tracks, of the Boston and Albany running west from Boston through Newton to Riverside and beyond. Passenger trains entered Boston over these tracks and proceeded into South Station. The Turnpike Authority, in constructing an expressway into Boston, desired to acquire part of the railroad right of way for the entire distance from Riverside to Newton. Therefore, it was proposed that two of the four main line tracks be taken out of service. The Authority desired to acquire all of the right of way for the entire distance between Newton and South Station. Therefore, it was proposed that all four tracks be taken out of service and two new tracks be constructed between these points and a short distance to the north of the old right of way. The railroad also proposed to move some passenger depots along the way so that they would have access to the main line tracks as so rearranged.

The I. C. C. ruled that it had no jurisdiction under Sec. 1 (18).

With respect to the two tracks to be taken out of use between Riverside and Newton, the I. C. C. concluded at page 463:

> "The removal of two of the four multiple main line tracks between Newton and Riverside heretofore described will still leave the applicants with a line of railroad between those points. For this reason, and for the further reason that there will be no change in the present train service, we conclude that the proposed removal does not constitute an abandonment of a line of railroad as contemplated by section 1 (18). Such removal, therefore, is not within our jurisdiction. The applicants' motion to dismiss that portion of the application will be granted."

With respect to the four tracks, which were to be replaced by two new tracks, between Newton and South Station, the I. C. C. concluded at page 463:

> "From the facts above stated it is also clear that the remaining portion of the application in Finance Docket No. 21263, i.e., removal of tracks between South Station and Newton, and that seeking construction between South Station and Newton in Finance Docket No. 21264, considered together cannot be said to constitute an abandonment or construction of a line of railroad within the meaning of section 1 (18). Applicants' entire line, after such removal and construction, will remain in service as before and will render exactly the same service. Compare *Philadelphia, N & N Y R Co. Application,* 67 I. C .C. 252. We are of the opinion that such proposal constitutes only a relocation of a portion of the applicant's line. Insofar as the applications in Finance Dockets Nos. 21263 and 21264 seek authority to abandon, construct, and operate, such applications will thus be dismissed for want of jurisdiction."

Thus the I. C. C. reached the result that the Boston and Albany proposal did not involve the "abandonment" or the "construction" of "a line of railroad" within the meaning of Sec. 1 (18). Nevertheless, in the opinion, there is the following language at page 461:

> "The entire present roadway between Riverside and Boston, which embraces the portion of track removal and that of *abandonment,* consists of four multiple main line tracks. Under the proposals the applicants will have two tracks for the full distance. Thus, after the track removal, *abandonment and construction, a line or railroad between the two points will remain.*" (Emphasis ours.)

It therefore appears that the I. C. C. concluded that even though the railroad's proposal involved an abandonment and construction of main line track, this did not constitute an "abandonment" and "construction" in the statutory sense because it was clear that the public convenience would in no wise be affected by the proposal.

It is, of course, true that it must be determined that the I. C. C. has jurisdiction before the I. C. C. has the authority to make an adjudication as to public convenience and necessity and grant or deny a certificate. It also appears, however, that in determining whether there is jurisdiction, an important factor that must be considered is the possible effect on the public and the railroads of proposed changes in operations.

The courts, as well as the I. C. C., have taken the view that the question whether there is an "abandonment" or "construction" of a "line of railroad" within the meaning of Sec. 1 (18) is to be answered, in part, by consideration of the possible effect on the public and the railroads. In the *Southern Pacific* case, *supra,* the Supreme Court emphasized the high cost of the proposed changes to the railroads. In *Texas and Pacific Ry.* v. *Gulf, etc. Ry.,* 270 U. S. 266 (1926), the Supreme Court held that in determining whether the track involved in that case was "industrial" track within the meaning of Sec. 1 (22) or a

"line of railroad" within Sec. 1 (18), it was proper to consider that its "purpose and effect" were of "national concern". In the case of *City of Des Moines* v. *Chicago, etc. Ry. Co.*, 264 F. 2d 454 (C. A. 8, 1959), the Court said at page 458:

> "With the term 'abandonment' being related in the statute to the question of public convenience and necessity, the courts must recognize the significance of this intertwining and allow the meaning which is thus mixed into the term to have its full play."

At the hearing on the application for a preliminary injunction, evidence was offered by plaintiffs and by defendants as to the economic effect on the railroads of being required to maintain operations at Union Station and as to the effect on the public and Union Station employees if the railroads were allowed to continue operations at the other terminals. At the time of hearing, this court was of the opinion that this evidence was admissible only on the issue as to whether the situation was of such urgency as to require a preliminary injunction. However, as we just indicated in this opinion, we now have the view that this evidence is relevant on the ultimate question to be determined, i.e., whether the I. C. C. has jurisdiction because there has been an abandonment or acquisition of a line of railroad with the meaning of Sec. 1 (18) and Sec. 5 (2). We should make it clear, however, that in considering this evidence in connection with the ultimate issue involved here, we are considering it only for purposes of making a jurisdictional determination and not for purposes of determining whether a certificate should be granted or denied—a matter left solely for determination by the I. C. C. Morover, in considering this evidence in connection with the ultimate issue in this case, we are not concerned with the precise effect of the railroads' actions on themselves and the public; we are only concerned with whether that effect is of sufficient significance to indicate the need for I. C. C. attention. Again, we emphasize that this is only one of the factors, although

an important factor, in determining whether the I. C. C. has jurisdiction.

While there was dispute at the hearing as to extent of the disparity between Union Station facilities and the terminal facilities now being used by Mo Pac and Southern, there seems to be no real doubt that the Union Station facilities are much better.* It is clear that the cessation of operations at Union Station has affected the interchange of passengers in interstate travel. It is also clear that 120 Union Station employees have lost their jobs and 75 remain unemployed.

Taking into consideration the language of and the apparent policy of the statute, the cases construing the statute, the character of the tracks and the operations thereover, and the effect on the public and on the employees of Union Station, we have concluded that at least some of the tracks at Union Station do constitute a "line of railroad" within the meaning of Sec. 1 (18) of the Act and conversely are not "spur" or "switching" tracks within the meaning of Sec. 1 (22); and further that the cessation of operations over these tracks constitutes an abandonment and not a mere relocation. Accordingly, Union Station, L & N, Southern and Mo Pac have abandoned a line of railroad in violation of the provisions of Sec. 1 (18).

We have further concluded that some of the tracks at Illinois Central terminal are likewise a "railroad line" within the meaning of Sec. 5 (2) of the Act and conversely are not "spur" or "switching" tracks within the meaning of Sec. 1 (18) of the Act; and further that the institution of operations there by L & N constitutes an acquisition of trackage rights and not a mere relocation. Accordingly, L & N has acquired trackage rights over or joint use of a line of railroad in violation of Sec. 5 (2) and 5 (4) of the Act.

---

* There is no evidence or contention that the L & N facilities at the Illinois Central terminal are not equal to those at Union Station. Moreover, the I. C. C. might well determine that the Southern and Mo Pac facilities are adequate.

Union Station makes the separate argument that there could be no abandonment so far as it is concerned because there has been a complete cessation of demand for its facilities. Even if Union Station is correct in this contention, this would have no practical effect on this litigation, because if the tenant railroads have abandoned Union Station in violation of Sec. 1 (18), any injunction to which plaintiffs are entitled would of necessity run against Union Station. *McGrody* v. *B & O Ry. Co.*, 217 F. Supp. 252 (E. D. Pa. 1963), relied upon by Union Station, is not apposite because in that case there was no demand from the public or the railroads for the services of the tug boat involved which had been used to move trains. Here there is demand from the public, through the City, for the services at Union Station.

Athough the lease of the tenant lines at Union Station expired by its terms on April 1, 1964, the tenant lines do not contend that the expiration of the lease affects the question whether there has been an abandonment. They are correct in making this concession. *Smith* v. *Hoboken Ry. Co.*, 328 U. S. 123 (1946).

Remedy

Since the facts determinative of the issues are not in dispute, and it is clear under the applicable law that plaintiffs are entitled to some relief, there remains to be decided only the extent and nature of the relief to which plaintiffs are entitled.

We have held that there has been an unlawful abandonment of a "line of railroad" at Union Station in violation of Sec. 1 (18) and an unlawful acquisition of a "railroad line" at the Illinois Central terminal in violation of Sec. 5 (2) and 5 (4). It seems to have been assumed by plaintiffs, and even by defendants, that if plaintiffs are ultimately entitled to prevail as against all defendants, proper relief would be to require the restoration of operations at Union Station just as they existed prior to April 1, 1964. It does not necessarily follow, however, that the relief should be this complete.

In the first place, while we are clear that there has been

an unlawful abandonment of a "line of railroad" at Union Station in that at least some of the tracks there constitute a "line of railroad", it is not so clear whether all of the tracks and the terminal building itself constituted or were parts of a line of railroad and were unlawfully abandoned.

In the second place, while complete cessation of operations over a line of railroad clearly constitutes an abandonment, it is far from clear how far operations may be reduced or how far the nature of services rendered may be altered before an abandonment would take place in violation of Sec. 1 (18). These matters having to do with reduction and changing the nature of services are normally regulated by state regulatory bodies.

Plaintiffs here seek only injunctive relief against an unlawful abandonment and an unlawful acquisition, and it would seem to follow that in granting relief, this court could go no further than to require the defendants to cease their violation of Sec. 1 (18) and Sec. 5 (2) and Sec. 5 (4). These questions as to the relief plaintiffs are entitled to should receive the particular attention of the parties at the plenary hearing which will be held on this matter.

We do believe that plaintiffs are entitled to a preliminary injunction, enjoining defendant Union Station from disposing, without leave of court, any of the remaining property now held by it and used by it prior to April 1, 1964, in operating the terminal and terminal facilities.

Plaintiffs will prepare and submit an order in this cause.

This 12th day of June, 1964.

BAILEY BROWN,
United States District Judge.

A True Copy.

Attest:

W. LLOYD JOHNSON,
Clerk,

By P. G. MCCLURE, *D. C.*

Letter of Judge Bailey Brown to Attorneys

Dated and Filed July 6, 1964

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TENNESSEE
Memphis 3

Sitting in Jackson

Chambers of BAILEY BROWN, Judge.

Mr. Thomas L. Robinson, United States District Attorney, Memphis, Tennessee

Mr. Patrick Johnson, Sr., Attorney, City of Memphis, Memphis, Tennessee

Mr. Edward P. Russell, Attorney at Law, Memphis, Tennessee

Mr. Harry W. Laughlin, Attorney at Law, Memphis, Tennessee

Mr. William F. Kirsch, Attorney at Law, Memphis, Tennessee

Mr. John Mack, Attorney at Law, Memphis, Tennessee

Mr. Jesse E. Johnson, Jr., Attorney at Law, Memphis, Tennessee

In Re: Interstate Commerce Commission v. Memphis Union Station et al., Civil No. 5192.

Gentlemen:

Plaintiffs have filed a motion for "clarification, instruction and guidance in preparing order to be entered on motion for preliminary injunction," which is, in effect, a motion to amend our memorandum decision. They propose, in this motion, that not only Union Station be enjoined from disposing of its property, but also that (1) L & N and Illinois Central be enjoined from carrying out their agreement for use of terminal trackage and (2) that the defendants be mandatorily enjoined to reinstitute service at Union Station as it existed prior to April 1.

Plaintiffs have also filed a motion for summary judgment on the theory that the determinative facts are undisputed and therefore the injunctions they propose should now be made final.

We believe that these motions do require a hearing at this time, and therefore a hearing will be held at Memphis on Saturday, July 18, at 9:30 A. M.

We think it might be helpful to advise counsel of our present thinking with respect to these motions and of the action we are considering taking.

As stated in our memorandum decision, we think, from the proof adduced at the hearing on the application for a temporary injunction, that L & N and Illinois Central have illegally participated in the acquisition of trackage rights over a railroad line and that Union Station, L & N, Mo Pac and Southern have illegally abandoned a line of railroad. We stated, in that decision, that at the plenary hearing we would consider the provisions of a final injunction with respect to acquisition and abandonment.

After further reflection, we have concluded that plaintiffs are entitled to an injunction as to the L & N and Illinois Central prohibiting their carrying out their trackage agreement. Such an injunction would, we think, clearly be within the authority of, and indeed is required by, Sec. 5 (8). With respect to the abandonment at Union Station, we do not believe, for reasons set out in our decision, that we have authority under Sec. 1 (20) to require the reinstitution of service as it existed prior to April 1. In short, we do not see how we can require defendants to do more than they were required by the Act to do prior to the abandonment. We have, however, concluded that plaintiffs are entitled to an injunction, requiring the defendants to cease abandonment of the tracks of Union Station. Such an injunction would, we think, clearly be within the authority of, and indeed is required by, Sec. 1 (20).

We also think, however, in view of all the circumstances that the defendants, if they choose to appeal, should be allowed a stay, upon giving proper bond, with respect to

the injunction insofar as it relates to acquisition and abandonment.

By holding this hearing now and entering such an injunction at this time, our resolution of these difficult questions could then be reviewed in the Court of Appeals at an earlier date than they would be if we delayed action until after a plenary hearing in the fall.

We further believe, as indicated in our opinion, that the operative facts determinative of this case are not in dispute, and therefore we think that the motion for summary judgment should be granted and the relief, herein indicated, should be made final.

It goes without saying that we will receive additional testimony or affidavits from the parties, if they desire to offer more, to be considered on plaintiffs' motion for a summary judgment and for a final injunction. We will also hear arguments from all parties who desire further argument.

Sincerely yours,

BAILEY BROWN.

BB:asw

APPENDIX C

Final Judgment of the United States District Court for the Western District of Tennessee

Entered October 14, 1964

This cause came on to be further heard on the 4th day of September, 1964, on the Court's memorandum decision dated June 12, 1964, and the Court's letter dated July 6, 1964, addressed to counsel of record, which letter was made a part of the record in this cause on plaintiff's oral motion, and on the following written motions:

(1) Plaintiff's motion for clarification, instruction and guidance in preparing order to be entered on motion for preliminary injunction;

(2) Motion of intervenor-plaintiff, Railway Labor Executives' Association for the Court to enter an order enjoining defendants from abandoning Union Station;

(3) Motion of intervenor-plaintiff, City of Memphis, for Court to enter order enjoining defendants from abandoning Union Station;

(4) Motion of Louisville and Nashville Railroad Company and Illinois Central Railroad Company, defendants, for partial summary judgment;

(5) Plaintiff's motion for summary judgment;

(6) Motion of defendant, Memphis Union Station Company, for leave to sell a locomotive;

(7) Motion of defendants, Missouri Pacific Railroad Company and Union Railway Company, to amend their joint answer herein;

(8) Motion of defendant, Memphis Union Station Company, to amend its answer herein;

(9) The respective formal replies thereto;

and on the following oral motions:

(1) Motion of defendant, Illinois Central Railroad Company, to dismiss the action as to it;

(2) Motion of defendant, St. Louis Southwestern Railway Company, to dismiss the action as to it;

(3) Motion of defendant, Union Railway Company, to dismiss the action as to it;

(4) The respective responses thereto; and

Counsel for all parties having appeared and presented argument, and the Court having considered the entire record, including all pleadings, testimony of witnesses in open court, affidavits, certified documents, exhibits, briefs of counsel and their oral arguments, finds:

(1) The motion of Misouri Pacific Railroad Company and the Union Railway Company to amend their joint answer should be granted;

(2) The motion of defendant, Memphis Union Station Company, to amend its answer should be granted;

(3) Defendants, Memphis Union Station Company, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company, and the Southern Railway Company, have abandoned a line of railroad at Memphis Union Station in violation of the provisions of Section 1 (18)-(20) of the Interstate Commerce Act;

(4) Defendants, Louisville and Nashville Railroad Company and Illinois Central Railroad Company, on or about April 1, 1964, entered into a trackage right arrangement for the use of certain track and the terminal incidental thereto at Illinois Central passenger station in Memphis, Tennessee, in violation of the provisions of Section 5 (2) and (4) of the Interstate Commerce Act;

(5) Plaintiff's motion for summary judgment should be granted to the extent that the defendants, Memphis Union Station Company, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company, and Southern Railway Company, should be permanently prohibited and enjoined from abandoning a line of railroad at Memphis Union Station, without authority from the Interstate Commerce Commission,

in violation of Section 1 (18)-(20) of the Interstate Commerce Act;

(6) Defendants, Louisville and Nashville Railroad Company and Illinois Central Railroad Company, should be permanently prohibited and enjoined from operating under the trackage right arrangement, covering certain tracks and the terminal incidental thereto at Illinois Central passenger station which has been found by this Court to have been entered into in violation of Section 5 (2) and (4) of the Interstate Commerce Act;

(7) The motion of defendants, Louisville and Nashville Railroad Company and Illinois Central Railroad Company, for partial summary judgment should be denied;

(8) The motion of defendant, Memphis Union Station Company, for leave to sell a locomotive should be granted in that Memphis Union Station Company should be permitted to dispose of the six hundred horsepower light switching yard diesel locomotive, Identification No. 10, 1942 Model, Electric Motor Division, General Motors;

(9) Memphis Union Station Company, in order to preserve the status quo, should be prohibited and enjoined from selling any property whatsoever, including but not limited to real estate, fixtures and movable equipment, without permission of this Court;

(10) The motion of defendant, Illinois Central Railroad Company, to dismiss this action as to it should be denied;

(11) The motion of defendant, St. Louis Southwestern Railway Company, to dismiss this action as to it should be denied;

(12) The motion of defendant, Union Railway Company, to dismiss this action as to it should be denied;

(13) The permanent injunction ordering the defendants, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company, Southern Railway Company and Memphis Union Station Company, to cease their abandonment of a line of railroad at Memphis Union Station, without authority

from the Interstate Commerce Commission, in violation of the provisions of Section 1 (18)-(20) of the Interstate Commerce Act, and the permanent injunction enjoining the Illinois Central Railroad Company and the Louisville and Nashville Railroad Company from continuing its trackage right arrangement commencing on or about April 1, 1964, for the use of certain track and the terminal incidental thereto at Illinois Central passenger station in Memphis, Tennessee, in violation of the provisions of Section 5 (2) and (4) of the Interstate Commerce Act, should be stayed pending an appeal by the defendants, conditioned upon the posting of bonds in the amount of Twenty-Five Thousand Dollars ($25,000.00) each by Memphis Union Station Company, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company, and Southern Railway Company.

It Is, Therefore, By The Court Ordered:

(1) That Missouri Pacific Railroad Company and the Union Railway Company are permitted to amend their joint answer;

(2) That Memphis Union Station Company is permitted to amend its answer;

(3) That the motion of plaintiff, Interstate Commerce Commission, for summary judgment be and it hereby is granted;

(4) That defendants, Memphis Union Station Company, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company, Southern Railway Company, and each of them, their directors, officers, agents, servants, employees, and all persons, both individual and corporate, in active concert and participation with them, be, and they are hereby permanently enjoined from their continued abandonment, without authority from the Interstate Commerce Commission, of a line of railroad and the operation thereof at Memphis Union Station, or contributing to such abandonment in violation of Section 1 (18)-(20) of the Interstate Commerce Act;

(5) That defendants, Illinois Central Railroad Company and Louisville and Nashville Railroad Company, and their directors, officers, agents, servants, employees, and all persons, both individual and corporate, in active concert and participation with them, be, and they are hereby enjoined from the continuation and effectuation of their arrangement for the acquisition of trackage rights over or joint use of a line of railroad and the terminal incidental thereto at Illinois Central passenger station at Memphis, Tennessee, entered into on or about April 1, 1964, in violation of Section 5 (2) and 5 (4) of the Interstate Commerce Act;

(6) That the motion of defendants, Louisville and Nashville Railroad Company and Illinois Central Railroad Company, for partial summary judgment be and it hereby is denied;

(7) That the motion of defendant, Memphis Union Station Company, for permission to sell one six hundred horsepower light switching yard diesel locomotive, Identification No. 10, 1942 Model, Electric Motor Division, General Motors, be and it is hereby granted:

(8) The defendant, Memphis Union Station Company, and its directors, officers, agents, servants, employees, and all persons, both individual and corporate, in active concert and participation with it, be and they hereby are, restrained and enjoined from disposing of any remaining property whatsoever, including but not limited to real estate, fixtures and movable equipment, now held or owned by Memphis Union Station Company, without permission of this Court.

(9) That the motions of defendants, Illinois Central Railroad Company, St. Louis Southwestern Railway Company, and Union Railway Company, to dismiss the instant action as to them be, and they hereby are denied;

(10) The permanent injunction against the defendants, Memphis Union Station Company, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company and the Southern Railway Company,

pertaining to their violation of Section 1 (18)-(20) of the Interstate Commerce Act and the permanent injunction against the defendants, Louisville and Nashville Railroad Company and Illinois Central Railroad Company, pertaining to their violation of Section 5 (2) and 5 (4) of the Interstate Comemrce Act be, and they hereby are stayed, pending appeal, conditioned upon the posting of bonds in the amount of Twenty-Five Thousand Dollars ($25,000.00) by the Memphis Union Station Company, Missouri Pacific Railroad Company, Louisville and Nashville Railroad Company and Southern Railway Company;

(11) The motion by the Memphis Union Station Company, filed on October 6, 1964, with respect to the final judgment to be entered herein, is now overruled.

The further ruling of this Court on September 4, 1964, is made a part of the record in this cause.

BAILEY BROWN,
United States District Judge.

Approved for Entry Oct. 14, 1964:

Edward P. Russell, Atty. for Memphis Union Station Co., Missouri Pacific Railroad Co., Union Railway Co., St. Louis Southwestern Ry. Co.

Thomas L. Robinson, United States Attorney for Interstate Commerce Commission.

Wm. F. Kirsch, Jr., Atty. for Railway Labor Executives Association.

A True Copy.

Attest:

W. LLOYD JOHNSON, *Clerk,*
By P. G. MCCLURE, *D. C.*

[Seal.]

Order Amending Final Judgment

Filed October 23, 1964

This cause came on to be further heard upon the motion to amend Final Judgment, filed herein by the defendants Louisville & Nashville Railroad Company and Illinois Central Railroad Company, on October 15, 1964; and, it appearing to the Court that this motion is well taken, should be granted and is approved by all parties:

It Is Hereby Ordered by the Court that the Final Judgment entered in this cause on October 14, 1964, be and the same is hereby amended as follows:

1. By adding to the end of subparagraph (6) of the Court's findings on page 4, immediately following the words Interstate Commerce Act and preceding the semi-colon, the following words: "Unless and until such trackage rights agreement is authorized by the Interstate Commerce Commission;"
2. By adding to the end of subparagraph (5) of the Court's order on page 7, immediately following the words Interstate Commerce Act and preceding the semi-colon, the following words: "Unless and until such trackage rights agreement is authorized by the Interstate Commerce Commission;"
3. By substituting the word "electromotive" for the words "'electric motor" wherever used in said Final Judgment;

And, this order shall become a part and be incorporated into the Final Judgment entered in this cause on October 14, 1964.

BAILEY BROWN,
United States District Judge.

APPENDIX D

Nos. 16466 through 16471

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

INTERSTATE COMMERCE COMMISSION, *Plaintiff-Appellee,*

and

CITY OF MEMPHIS, TENNESSEE, AND RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Intervenor-Plaintiffs-Appellees,*

v.

MEMPHIS UNION STATION COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, UNION RAILWAY COMPANY, LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SOUTHERN RAILWAY COMPANY, *Defendants-Appellants.*

Decided March 31, 1966.

APPEAL from the District Court of the United States for the Western District of Tennessee.

Before: EDWARDS and CELEBREZZE, Circuit Judges, KENT, District Judge*

EDWARDS, Circuit Judge. The Interstate Commerce Commission filed these complaints in the United States District Court for the Western District of Tennessee. The complaints sought injunctions to restrain five railroads [1] and the Memphis Union Station Company from abandoning operations at the Memphis Union Station without prior ICC approval of both the abandonment and the railroads' alternate arrangements.

---

* Honorable W. Wallace Kent, Chief Judge, U. S. District Court for the Western District of Michigan, sitting by designation.

[1] Defendant Union Railway Company is a wholly-owned subsidiary of defendant Missouri Pacific Railroad Company.

Prior to the commencement of these actions, the railroads in question (in the face of an ICC warning) had actually abandoned service to the Union Station and each of the operating railroads had found other passenger terminal facilities.

The cessation of operations was accomplished without application for abandonment of lines of railroad to the ICC and the substituted service was accomplished without application for approval of the agreement for extension of service to the other terminals.

The City of Memphis intervened to argue against the abandonment of the Union Station on behalf of the city and its citizens, and a representative of the Railway Labor Executives' Association intervened to contend that the interests of the jobs of 120 people who had been laid off by the closing of the Union Station should be taken into account likewise, and would be if the ICC were held to have jurisdiction of the matter.

The merits of the abandonment and alternate service issues were not before the District Court and are not before us. Appellees contended simply that neither could be lawfully accomplished without ICC approval under the terms of the Interstate Commerce Act, 49 U.S.C. §§ 1-27 (1964).

Judge Bailey Brown after full hearing issued a memorandum decision holding that the Interstate Commerce Commission did have jurisdiction in relation to both the abandonment issue and the agreement for extension of services issue, and issued injunctions requiring the defendants to cease and desist from the violations found.

The appellants contend that they are exempt from ICC jurisdiction in relation to the current problem because of the exception contained in Section 1(22), 41 Stat. 478 (1920), 49 U.S.C. § 1(22) (1964). The exemption reads:

> "The authority of the Commission conferred by paragraphs (18) to (21) of this section, both inclusive shall not extend to the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one State . . . ." 41 Stat. 478 (1920), 49 U.S.C. § 1(22) (1964).

Appellants also argue that Congress in 1920 in enacting the ICC legislation, and in 1958 in amending it, gave consideration to the exact problem currently before us and specifically declined to grant the ICC power over union terminals.

Appellees rely upon the broad language of Sections 1(18) and 1(20), and Section 5(2 and 4) as follows:

> "[N]o carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad or the operation thereof, unless and until it shall first have obtained from the Commission a certificate . . . ." 41 Stat. 477-78 (1920), as amended, 49 U.S.C. § 1(18) (1964).
>
> "Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest. . . ." 41 Stat. 478 (1920), 49 U.S.C. § 1(29) (1964).[2]
>
> "It shall be lawful, with the approval . . . of the commission . . .
>
> (ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto. . . ." 54 Stat. 905 (1940), 49 U.S.C. § 5(2).
>
> (1964).

Section 5(4) makes unlawful such an agreement without Commission approval.

The ICC also relies upon a number of cases where the ICC has assumed jurisdiction, sometimes without contest from the parties involved, in terminal track situations some-

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[2] Section 1(20) also provides criminal penalties for violation of Sections 1(18) and (19).

what comparable to that which we have before us. *St. Joseph Union Depot Co.*, 133 I.C.C. 537 (1927); *Atchison, Topeka & Santa Fe Railway Co. Operation*, 224 I.C.C. 39 (1937); *Fort Worth Union Passenger Station Co.*, 97 I.C.C. 698 (1925); *St. Louis, San Francisco & Texas Railway Co. Trackage Rights*, 267 I.C.C. 30 (1946).

Finally, the ICC and the District Judge rely upon Mr. Justice Taft's opinion in *Railroad Commission of California* v. *Southern Pacific Company*, 264 U.S. 331 (1924), which we shall refer to in more detail later.

The Cotton Belt Railroad (St. Louis Southwestern Railway Co.) appears with an entirely separate argument and asks to be dismissed as an appellant. Cotton Belt says that it had nothing to do with the matter, since it had not been operating any trains into the Union Station since 1956.

This appeal then is specifically concerned with problems of statutory interpretation. The detailed facts are not in dispute. They are quoted below from a statement of facts in appellant Southern Railway Company's brief with which all parties express agreement:

> "For many years, defendants Missouri Pacific Railroad Company ('MoPac'), the Louisville and Nashville Railroad Company ('L & N'), Southern Railway Company ('Southern') and the Illinois Central Railroad Company ('Illinois Central') have provided rail passenger service in interstate commerce to the city of Memphis, Tennessee. Defendant St. Louis Southwestern Railway Company ('Cotton Belt') rendered similar service to Memphis until it was discontinued in 1952. Defendant Union Railway Company ('Union Railway'), wholly owned Tennessee switching and terminal subsidiary of MoPac, owns the main line tracks used by the MoPac passenger trains to reach the Memphis Union Station.
>
> "In 1909, the N.C. & St. L. Ry. Co. (later merged with L&N) and defendants MoPac, L&N, Southern and Cotton Belt organized the Memphis Union Station Company ('Union Station') for the purpose of constructing and maintaining a union passenger depot for the joint use of the proprietary railroads as tenants. The union

station was completed in 1912, at which time the four railroads rerouted their passenger trains from their former stations in Memphis to the new union depot. Forty percent of Union Station's stock is owned by the L&N; each of the other three railroads owns 20% of the shares. The expenses of Union Station have been prorated among the proprietary railroads, as tenants, on a user basis.

"Union Station's property is located immediately north of, and adjacent to, the mainline tracks of the L&N, Southern and Union Railway on Broadway. To reach the Union Station tracks, passenger trains backed into the station from the mainline tracks on Broadway; the same trains departed via the same route, the station tracks being 'stub-end' tracks leading to nothing but the station building itself and related facilities.

"Prior to 1925, Union Station classified its station tracks as 'main line' tracks in reports filed with the Commission. In that year, however, the Commission ruled, in *Memphis Uuion Station Co.*, 97 I.C.C. 418, 429 (1925), that the company 'owns no mainline milage' and characterized Union Station's tracks as 'yard tracks and sidings.' Since that time, Union Station, by order of the I.C.C., consistently has identified its tracks in reports to the Commission as 'Yard tracks.'

"On November 1, 1952, the Cotton Belt discontinued its passenger service to Memphis by authority of the Arkansas Public Service Commission. Thereafter, it ceased to use Union Station. No approval for this withdrawal by Cotton Belt was obtained from the Commission; nor did the Commission ever allege that this action required prior Commission approval.

"The original joint operating agreement between the railroads for the use of Union Station was for 50 years, expiring April 1, 1962. Subsequently, it was agreed by MoPac, L&N and Southern to extend the agreement another two years, to April 1, 1964. Confronted with the economic pinch of declining rail patronage and rising costs of operating Union Station, none of the tenant railroads desired any further

extension of the agreement. Upon the expiration date, both MoPac and Southern reactivated their former passenger stations in Memphis, and the L&N reached agreement with the Illinois Central to share the use of the Illinois Central's station 2 blocks west of Union Station.

* * * * * * *

"The Director of the Commission's Bureau of Finance, in response to letters from employees of Union Station, on February 27, 1964, directed identical letters to MoPac, L&N and Southern inquiring as to their intentions and asking whether any abandonment was contemplated that required Commission approval. Both MoPac and L&N, by written replies, confirmed their intentions to leave Union Station at the expiration of the agreement and expressed their opinion that no Commission approval was required. Southern orally advised the Commission that if the other two railroads terminated operations at Union Station, it would have no alternative but to do likewise.

"On March 16, 1964, the Commission's Director, Bureau of Finance, again addressed letters to the interested railroads stating it was his 'informal opinion that a railroad may not abandon operations over a line of another such carrier without approval under section 1(18), except to the extent it may be exempt as provided in that section or in section 1(22),' and suggested that 'in order to avoid a possible violation of the Interstate Commerce Act' the railroads consider the filing 'of appropriate applications which may be accompanied by motions to dismiss for lack of jurisdiction.' By written replies, dated March 24 and 25, 1964, both L&N and MoPac reiterated their view that the relocation of their Memphis passenger facilities was exempt from the requirement of prior Commission approval under Section 1(18). No further communication was received from the Commission, and on April 1, 1964, each of the three railroads terminated

operations at Union Station and commenced using station facilities at their new locations in Memphis.

"On May 14, 1964, over seven weeks after these changes had been made, the Commission filed a complaint in the United States District Court for the Western District of Tennessee against Union Station, its proprietary railroads and Illinois Central.

"The complaint alleged that on April 1, 1964, Union Station, MoPac, L&N and Southern had abandoned operations at Union Station without having first obtained from the Commission a certificate that the present and future public convenience and necessity permit of such abandonment, as allegedly required by Section 1(18) of the Interstate Commerce Act, 49 U.S.C. 1(18), and that the District Court should issue an injunction, under Section 1(20) of the Act, 49 U.S.C. 1(20), restraining defendants from abandoning or contributing to the abandonment of the use and operation of Union Station's facilities.

"The complaint also alleged that commencing April 1, 1964, defendant L&N had instituted passenger service to and from the Memphis station of Illinois Central without having first obtained Commission approval, as allegedly required by Section 5(2) of the Interstate Commerce Act, 49 U.S.C. 5(2), and that the District Court should issue an injunction, under Section 5(8) of the Act, 49 U.S.C. 5(8), restraining L&N from using Illinois Central's station and station tracks.

"Both the City of Memphis and the Railway Labor Executives' Association intervened as plaintiffs in support of the Commission's complaint.

"After a hearing on the Commission's motion for preliminary injunction, District Judge Bailey Brown on June 12, 1964, issued a memorandum decision, which was later supplemented by a letter to all parties, July 6, 1964. In his opinion, Judge Brown concluded:

(1) 'that at least some of the tracks at Union Station do constitute a "line of railroad" within the meaning of Sec. 1(18) of the Act and conversely are

not "spur" or "switching" tracks within the meaning of Sec. 1(22); and further that the cessation of operations over these tracks constitutes an abandonment and not a mere relocation. Accordingly, Union Station, L&N, Southern and MoPac have abandoned a line of railroad in violation of the provisions of Sec. 1(18).'

(2) 'that some of the tracks at Illinois Central terminal are likewise a "railroad Line" within the meaning of Sec. 5(2) of the Act and conversely are not "spur" or "switching" tracks within the meaning of Sec. 1(18) of the Act; and further that the institution of operations there by L&N constitutes an acquisition of trackage rights and not a mere relocation. Accordingly, L&N has acquired trackage rights over or joint use of a line of railroad in violation of Sec. 5(2) and 5(4) of the Act.'

"After further hearing, the Court entered its final judgment and order, October 14, 1964, amended October 23, 1964, which confirmed the prior findings of the memorandum decision and granted a Commission motion for summary judgment to the extent that Union Station, MoPac, L&N and Southern were enjoined from abandoning a 'line of railroad' at Union Station without approval of the Commission and L&N and Illinois Central were enjoined from operating under a trackage agreement at Illinois Central passenger station unless and until such agreement was authorized by the Commission. These permanent injunctions were stayed pending appeal upon the posting of supersedeas bonds by defendants Union Station, MoPac, L&N and Southern."

While the positions of the various appellant railroads are not identical, our view of the relevant statutory provisions does not require the specific details which each has added p[illegible] own individual situation, except to the exte[illegible] in this opinion.

We believe the two principal questions for our decision are these: (1) Was the trackage of the Memphis Union

Station which was abandoned by appellants in 1964 a "line of railroad" within the meaning of Section 1(18) so as to require ICC approval prior to abandonment?

(2) Where at least one of the appellants entered into a trackage use agreement with another railroad in order to operate from alternate facilities, did such an agreement require prior ICC approval under Sections 5(2) and 5(4)?

The District Judge who heard this case answered both of these questions Yes.

The Claim of Exemption

Appellants rely principally in this appeal upon the contention that since the Memphis Union Station was reached by switches from the main lines of the railroads concerned, and since the station tracks were "stub end" tracks, the exemption from regulation of Sec. 1(22) applies to them. The language of the section exempts "spur, industrial, team, switching or side tracks located . . . wholly within one state. . . ."

We recognize, of course, that in some sense the Memphis Union Station trackage could be referred to as "spur" or "switching" trackage. It is certainly not trackage on which trains move "through."

But clearly it is trackage on which interstate passenger service has both originated and terminated since 1912. No passenger seeking to leave Memphis for another state, or seeking to come to Memphis from another state by any of the railroads operating therefrom during all of that period could do so without traveling over some of the trackage of the Memphis Union Station. The now abandoned operations were an integral part of uninterrupted transportation of interstate passengers. We do not think that the normal usage of language would include a facility such as the trackage of the Memphis Union Station as "spur" or "switching" tracks. *Detroit & Mackinac Railway Co.* v. *Boyne City, Gaylord & Alpena Railroad Co.*, 286 Fed. 540, 546-47 (E.D. Mich. 1923).

Administrative Interpretation

The weight of administrative interpretation is plainly in support of the view expressed above. Repeatedly during the history of the operation of the Memphis Union Station the ICC has assumed that it had jurisdiction over operations over its trackage. *Rules, Standards and Instructions for Signal Systems—Memphis Union Station Co.*, 310 I.C.C. 669 (1960); *Memphis Union Station Company—Extension of Operating Agreement*, Finance Board No. 3, Interstate Commerce Commission, Finance Docket No. 21933, April 25, 1962; *Memphis Union Station Company*, 97 I.C.C. 418 (1925).

Similar interpretations have been made repeatedly by the ICC pertaining to terminal trackage at other union terminals. *St. Joseph Union Depot Co., supra; Atchison, Topeka & Santa Fe Railway Co. Operation, supra; Fort Worth Union Passenger Station Co., supra; St. Louis, San Francisco & Texas Railway Co., Trackage Rights, supra.* See also *Illinois Central Railroad Co. Construction and Trackage Rights*, 307 I.C.C. 493 (1959), *modified*, 317 I.C.C. 502 (1962); *Norfolk & Western Railway Company* v. *United States*, 241 F. Supp. 974 (N.D. Ohio 1965), *prob. juris. noted*, 34 U.S.L. Week 3171 (U.S. Nov. 16, 1965) (No. 543).

While not controlling of our decision, the administrative interpretation is entitled to great weight. *Udall* v. *Tallman*, 380 U.S. 1 (1965); *Review Committee, Venue VII, Commodity Stabilization Service, United States Department of Agriculture* v. *Willey*, 275 F.2d 264 (C.A. 8, 1960), *cert. denied*, 363 U.S. 827 (1960).

Trackage Use and National Concern

We have already emphasized the most important fact in the record—that passengers moved in interstate commerce to and from the City of Memphis over the Memphis Union Station tracks in continuous uninterrupted movements from 1912 to 1964. It is, we believe, the use of these tracks as an integral part of railroad systems developed to accommodate interstate commerce which determines that they constitute

"a line of railroad" within the meaning of Section 1(18). *Transit Commission* v. *United States,* 289 U.S. 121 (1933).

In this regard the District Judge found that such use was a subject of "national concern." *United States* v. *Idaho,* 298 U.S. 105 (1936); *Texas and Pacific Railway Co.* v. *Gulf Railway Co.,* 270 U.S. 266 (1926). The evidence in this record seems to us amply to justify the District Judge's finding in this regard. It certainly cannot be set aside as "clearly erroneous." Rule 52(a) Fed. R. Civ. P.

LEGISLATIVE HISTORY

With all of this having been said, appellant's most persuasive argument has yet to be dealt with. Appellant Southern's brief seeks to demonstrate that the legislative history of the Interstate Commerce Act shows conclusively that Congress in adopting this legislation debated and rejected inclusion of railroad stations under the regulatory power of the ICC. In this regard appellants rely upon an amendment offered by Congressman McClintic of Oklahoma:

> "Provided further, that the Commission is hereby given authority to require a carrier to maintain his present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission." 58 Cong. Rec. 8578 (1919).

This facet of the legislative history argument is not particularly persuasive in regard to our present case. The issue here does not pertain to the station building or depot. It pertains to railroad trackage to or in such a station. Station buildings or depots might be altered or replaced without material (or any) change in trackage. The rejection of the quoted amendment may not be read as squarely applicable to the instant dispute.

This distinction is not, however, of any help in dealing

with the quotation from Congressman Esch of Wisconsin during debate on the bill:

> "But neither provision, the building of new lines or the abandonment of old ones, affects spurs or switches or terminal tracks or interurban lines wholly within a State. These we leave to State control, where they already belong." 58 Cong. Rec. 8316 (1919).

We recognize that this statement is due appropriate weight in our consideration of legislative intent and that it is inconsistent with the result reached by the District Judge. Taking into account, however, all of the factors which bear on proper interpretation of this statute, we do not think this aspect of the legislative debate is controlling.

As we have seen, Congress did not employ in the exemption clause words which in normal usage would include the trackage of the Memphis Union Station.

Further, we believe that it is significant that although the words "terminal tracks" were used in the debate, they were not employed in the exemption clause, Sec. 1(22), upon which appellants largely plant their case.

And as Judge Brown notes, this is true, even though the terms "terminal" and "terminal facilities" as classifications separate from "switches" and "spur tracks" were actually employed in another unrelated section of the statute.[3]

Most important of all, in the interpretation of legislative intent is the clearly expressed purpose of Congress to grant authority to the ICC to deal with the construction, extension and abandonment of any lines of railroad employed in interstate commerce. See Sections 1(18) and

---

[3] "The term 'railroad' as used in this chapter shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property." 41 Stat. 474 (1920), as amended, 49 U.S.C. § 1(3)(a) (1964).

1(20). Such a purpose seems to us to express a grant of authority over interstate railroad construction and abandonment as a part of a national scheme and purpose.

It appears to us that this purpose was recognized early in the interpretation of the ICC legislation:

> "The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged. *Dayton-Goose Creek Railway Co.* v. *United States*, 263 U.S. 456, 478 (1924).

In the *Southern Pacific* case, Chief Justice Taft discussed union terminal problems as a part of interstate railroad regulation:

> "We think, however, that means of control over installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18 to 21) of § 402. They provide that no interstate carrier shall undertake the extension of its line of railroad or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation over such additional or extended line of railroad unless and until the Commission shall certify that public convenience present or future requires it, *and that no carrier shall abandon all or any*

portion of its line or the operation of it without a similar certificate of approval. Such a certificate is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals." *Railroad Commission* v. *Southern Pacific Co., supra* at 344. (Emphasis supplied.)

As Judge Brown pointed out in his excellent memorandum opinion in this case:

> "The courts have held that the exceptions contained in Sec. 1(22) should be strictly construed. *Piedmont etc. Ry. Co.* v. *I. C. C.*, 286 U.S. 299 (1932); *Lancaster, et al.* v. *Gulf etc. Ry. Co.*, 298 Fed. 488 (S.D. Tex., 1934); *Chicago etc. Ry. Co.* v. *Northern Pacific Ry. Co.*, 120 F. Supp. 710 (W.D. Wash., 1954). In the *Piedmont* case, it is said at page 311:
>
> > 'The Transportation Act was remedial legislation and should therefore be given a liberal interpretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended."

Trackage at the Memphis Union Station which had previously been used for continuous railroad passenger service in interstate commerce was a part of several national railroad systems. It was created, as this record clearly shows, at great expense. It is properly termed, as the District Judge held, a subject of national concern. We do not think that Congress intended such facilities to be exempted from regulation.

It is the opinion of this court that the abandonment of railroad passenger service at the Memphis Union Station on or about April 1, 1964, required the abandonment of a "line of railroad" within the meaning of Sec. 1 (18) and 1(20) of the Interstate Commerce Act. Clearly under the cited provisions such abandonment could be legally accomplished only by prior approval of the Interstate Commerce Commission.

As to the remaining issues in this appeal, we feel that the District Judge likewise reached the right result. Even more specifically than Sections 1(18) and 1(20) prohibit abandonment without ICC approval, Sections 5(2) and (4) appear to us to require prior ICC approval for the trackage right agreement between the defendant Louisville and Nashville Railroad Co. and the Illinois Central Railroad Co. for the use by the former of the latter's trackage and passenger station. We affirm Judge Brown's judgment in this respect on the reasoning of his opinion and the facts as found by him.

The last issue which seems to us to merit specific mention is the contention of the Cotton Belt (St. Louis Southwestern Railway Co.) that it should be dismissed as a defendant since in fact it has not operated passenger trains into the Memphis Union Terminal since 1962. Attractive as this contention is, we finally have been forced to conclude that we should affirm Judge Brown's denial of the Cotton Belt's motion to dismiss. The Cotton Belt, as a one-fifth owner of the Memphis Union Station Co., has a present right to run trains into that station employing a line or lines of railroad so to do. Since that right will undoubtedly be affected by the outcome of this litigation, we believe the Cotton Belt is a proper party.

For the reasons set forth herein and in the memorandum decision of the District Judge (which we specifically affirm), we affirm the final judgment entered October 14, 1964, and the order amending same entered October 23, 1964.

APPENDIX E

Judgments of the United States Court of Appeals for the Sixth Circuit

Filed March 31, 1966

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
No. 16,466

INTERSTATE COMMERCE COMMISSION, *Plaintiff-Appellee,*

and

CITY OF MEMPHIS, TENNESSEE, ET AL, *Intervenor-Plaintiffs-Appellees,*

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL, *Defendants-Appellants.*

Before: EDWARDS and CELEBREZZE, Circuit Judges, and KENT, District Judge.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4)

Entered by order of the Court.

s/ CARL W. REUSS,
Clerk.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 16,467

INTERSTATE COMMERCE COMMISSION, *Plaintiff-Appellee*,

and

CITY OF MEMPHIS, TENNESSEE, ET AL., *Intervenor-Plaintiffs-Appellees*,

vs.

SOUTHERN RAILWAY COMPANY, *Defendant-Appellant*.

Before: EDWARDS and CELEBREZZE, Circuit Judges, and KENT, District Judge.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court.

s/ CARL W. REUSS,
Clerk.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 16,468

INTERSTATE COMMERCE COMMISSION, *Plaintiff-Appellee,*

and

CITY OF MEMPHIS, TENNESSEE, ET AL., *Intervenor-Plaintiffs-Appellees,*

vs.

MISSOURI PACIFIC RAILROAD COMPANY, *Defendant-Appellant.*

Before: EDWARDS and CELEBREZZE, Circuit Judges, and KENT, District Judge.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court.

s/ CARL W. REUSS,
Clerk.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 16,469

INTERSTATE COMMERCE COMMISSION, *Plaintiff-Appellee,*

and

CITY OF MEMPHIS, TENNESSEE, ET AL., *Intervenor-Plaintiffs-Appellees,*

vs.

MEMPHIS UNION STATION COMPANY, *Defendant-Appellant.*

Before: EDWARDS and CELEBREZZE, Circuit Judges, and KENT, District Judge.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court.

s/ CARL W. REUSS,
Clerk.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 16,470

INTERSTATE COMMERCE COMMISSION, *Plaintiff-Appellee,*

and

CITY OF MEMPHIS, TENNESSEE, ET AL., *Intervenor-Plaintiffs-Appellees,*

vs.

UNION RAILWAY COMPANY, *Defendant-Appellant.*

Before: EDWARDS and CELEBREZZE, Circuit Judges, and KENT, District Judge.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court.

s/ CARL W. REUSS,
Clerk.

APPENDIX F

Order Denying Petition for Rehearing and Correcting Opinion

Filed May 6, 1966

Before: EDWARDS and CELEBREZZE, Circuit Judges, and KENT, District Judge.

The petition for rehearing filed by defendants-appellants Louisville and Nashville Railroad Co. and Illinois Central Railroad Company, in appeal No. 16,466, having been fully considered, is hereby DENIED.

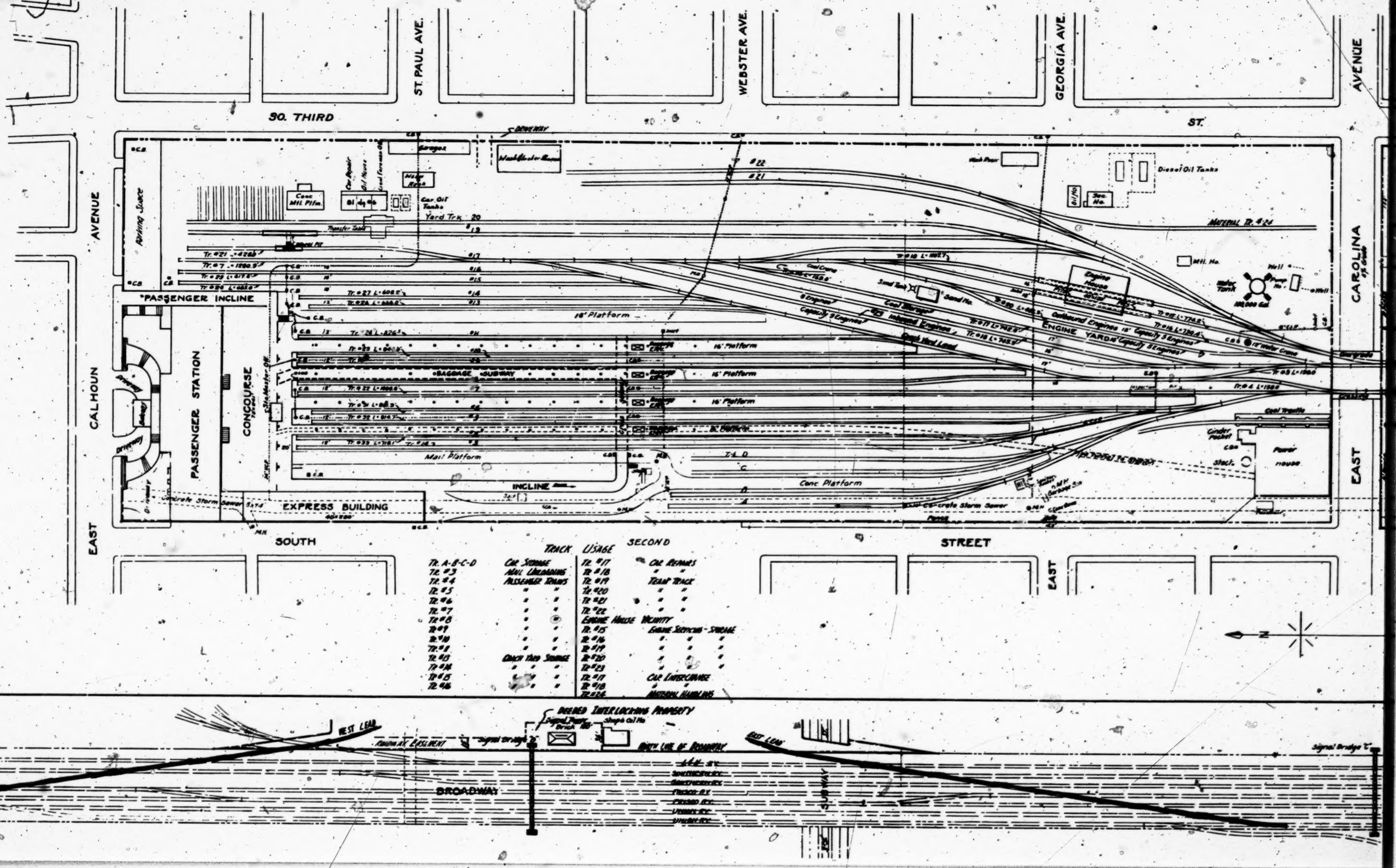
On petition filed by defendant-appellant St. Louis Southwestern Railway Company, in appeal No. 16,471, the court corrects its opinion to show 1952 as the date of discontinuance of its rail passenger service to the Memphis Union Station.

Entered by order of the Court.

s/ CARL W. REUSS,
Clerk.

(8611-6)

APPENDIX G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PASSENGER STATION
CONCOURSE
"PASSENGER INCLINE
"BAGGAGE "SUBWAY
EXPRESS BUILDING
INCLINE
Mail Platform
18' Platform
16' Platform
15' Platform
Arriving Space
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Car Oil Tanks
Yard Trk. 20
Transfer Table
Diesel Oil Tanks
Material Tr. #24
Engine House
ENGINE YARD (Capacity 8 Engines)
Outbound Engines
Inbound Engines
Coal Wharf
Coal Trestle
Cinder Pocket
Power house
Stack
Cinder Track
Cone Platform
Sand House
Sand Bin
Coal Crane
Water Tank
Pump House
Well
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Oil No.
Store No.
Track Usage
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Tr. A-B-C-D Car Storage
Tr. #3 Mail Unloading
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Tr. #5
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Tr. #27
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Tr. #30 Material Handling
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Shop & Oil Ho
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Signal Bridge "B"
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SUBWAY
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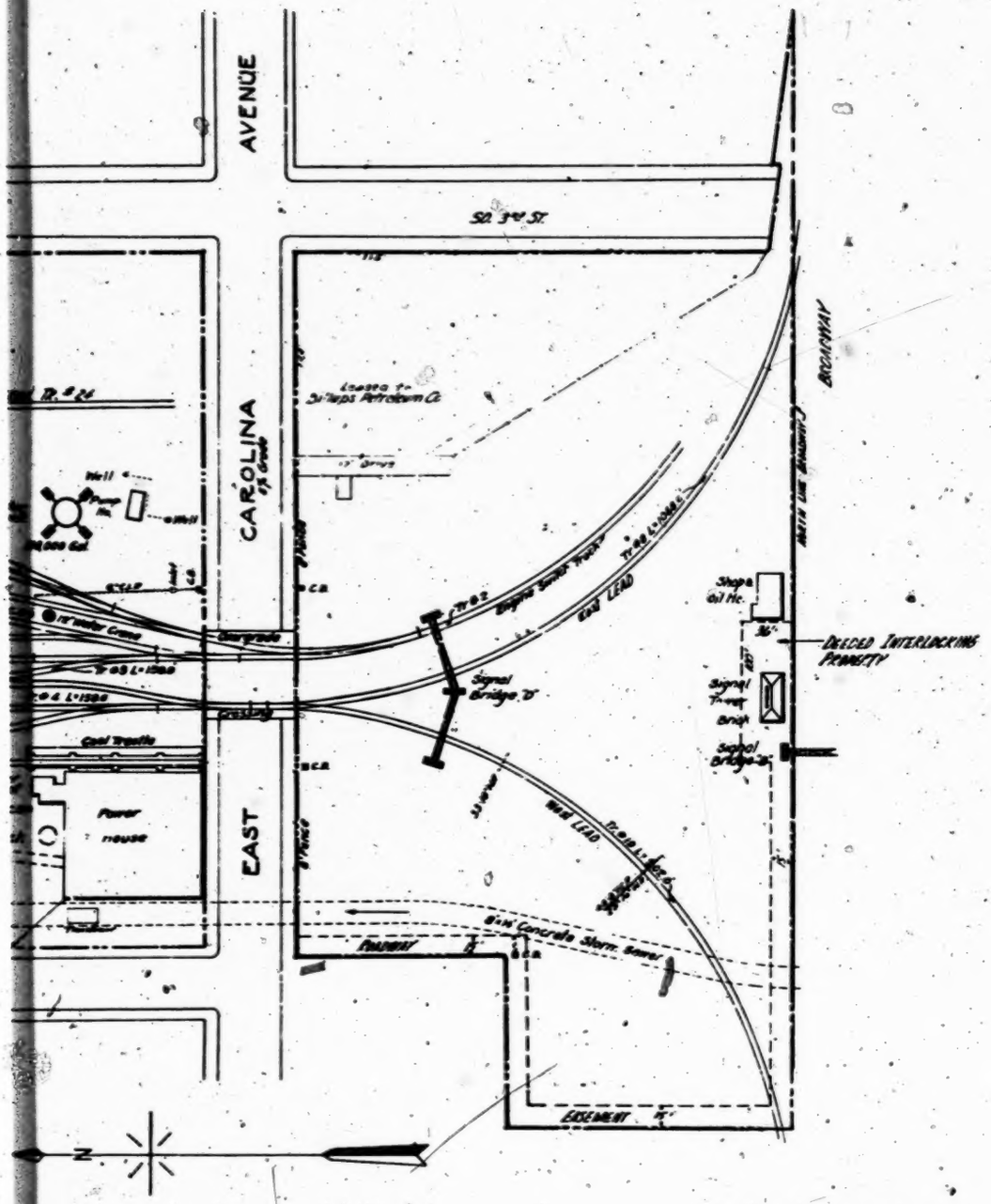
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Power House
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Office-Supreme Court, U.S.
FILED
JUL 18 1966
JOHN F. DAVIS, CLERK

No. 273

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, MEMPHIS UNION STATION COMPANY, and UNION PACIFIC RAILWAY, *Petitioners,*

v.

INTERSTATE COMMERCE COMMISSION, CITY OF MEMPHIS, TENNESSEE, and RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION IN OPPOSITION

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July, 1966

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 273

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, MEMPHIS UNION STATION COMPANY, and UNION PACIFIC RAILWAY, *Petitioners*,

v.

INTERSTATE COMMERCE COMMISSION, CITY OF MEMPHIS, TENNESSEE, and RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION IN OPPOSITION

OPINIONS BELOW

The District Court's opinion is reported at 230 F. Supp. 456, and reproduced in Appendix B at pages 7a-25a to the petition. The final judgment of the District Court is reproduced in Appendix C at pages 29a-35a to the petition.

The opinion of the United States Court of Appeals for the Sixth Circuit set forth in Appendix D to the petition, pages 36a-50a, is unreported.

JURISDICTION

The judgments of the court below were entered on March 31, 1966 (Pet. 51a-55a). The petition for a writ of certiorari was filed June 21, 1966. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Was the trackage of the Memphis Union Station, operations over which were abandoned by petitioners in 1964, a "line of railroad" within the meaning of Section 1(18) so as to require approval of the Interstate Commerce Commission prior to abandonment?

2. Where at least one of the petitioners commenced operations over the trackage of another railroad in order to operate to and from alternate facilities, would such operation require Commission approval under Sections 5(2) and 5(4)?

The District Court which heard this case answered both of these questions in the affirmative, and the court below, on appeal, affirmed its judgment.

STATUTES INVOLVED

The relevant provisions of the Interstate Commerce Act, 49 U.S.C., Sections 1(18)-(20) and (22), and 49 U.S.C., Sections 5(2), (4) and (8), are set out at pages 1a-6a in Appendix A to the petition.

STATEMENT

Petitioners' statement of the facts of the case, as set forth at pages 3-9 of the petition, is substantially correct with the addition of the following statement (App. 178a):[1]

> "Shortly after the termination of operations at Union Station, 120 of its employees were discharged, of whom about 75 have not obtained other employment. It is in behalf of these discharged employees that the Labor Association [RLEA] has intervened." (Pet. 11a)

Thus, it is shown that the Memphis Union Station, a common carrier by railroad (Pet. 14a), prior to April 1, 1964, operated as a passenger terminal in that city and is owned by the petitioners Southern Railway Company (Southern), Missouri Pacific Railroad Company (MoPac), Louisville and Nashville Railroad Company (L&N), and St. Louis-Southwestern Railway Company (Cotton Belt); that the Southern, MoPac, and the L&N abandoned operations over trackage constituting part of the terminal properties of Memphis Union Station used in the performance of interstate transportation of passengers; that upon such abandonment the Southern began using and operating over trackage to a building some 1.8 miles from Memphis Union Station, which had last been used as a passenger terminal for the Southern over 50 years ago (App. 177a); that MoPac began use of and operating over tracks of its subsidiary Union Railway Company

[1] In similar fashion to petitioners, references herein to "App." are to the "Joint Appendix of Defendants-Appellants" in the Court of Appeals, a copy of which is included in the certified copy of the record filed herein.

to a building which, likewise, had not been used as a passenger terminal for over 50 years (App. 177a); that L&N began operation over tracks within terminal facilities of and owned by the Illinois Central Railroad (IC); and that all operations of the tracks and terminal facilities of the Memphis Union Station were thus abandoned by Memphis Union Station and its tenant railroads.

ARGUMENT

The petition fails to present a substantial question requiring review by this Court. Whereas petitioners claim that the ruling of the lower court conflicts with settled law, is contrary to the intent of Congress in the enactment of the sections of the Interstate Commerce Act (Act) involved, and is opposed to the settled administrative construction of those sections of the Act, the judicial and administrative references upon which petitioners rely to support such contentions fail to show that the lower court erred in its decision on the issues presented, or that there is need for this Court's review of judgments entered.

Relying primarily on strained semantics, petitioners attempt to persuade this Court, as they failed to persuade the court below, that the statutory authority of the Commission over abandonments of the operation of "lines of railroad" by interstate railroads is restricted to railroad trackage which petitioners would describe as "main line" or "through" trackage whether or not such trackage is located in passenger stations or terminal areas operated in interstate service by railroads. Thus, petitioners urge that only where it is shown that a railroad station, depot or terminal is situated "side-saddle", or "astride", track-

age used for loading and unloading of passengers *and* for the "through" transportation of passengers, and there is an attempted abandonment of such trackage, can there be an abandonment of "a line of railroad" sufficient to require the prior authority of the Interstate Commerce Commission[2] (Commission). Petitioners contend thus that all other terminal trackage is within the exemptions of Section 1(22) of the Act and properly characterized as "spur, industrial, team, switching, or side tracks", and not therefore a "line of railroad".

Interwoven in their arguments are references to passenger train service curtailments governed by Section 13a of the Act and irrelevant to the issues presented here. Substantial reliance is placed by petitioners upon their own interpretation of the decision of this Court in *Railroad Commission* v. *Southern Pacific Co.*, 264 U.S. 331.

The opinion of the Court of Appeals clearly shows that it fully considered the above contentions pressed by petitioners and found them unpersuasive so as to permit of a decision by that court that interstate carriers by railroad could undertake by themselves the determination of how and by what means the public convenience and necessity should be served in the transportation of passengers into, through, and from

[2] Even petitioner's resort to "physical" characteristics of passenger terminals and trackage therein as definitive of the scope of application of Section 1(18) of the Act, does not serve to remove trackage within Memphis Union Station from what it concedes to be the scope of Commission authority because as shown by the description of the trackage involved and train operations thereon set forth in the opinion of the District Court (Pet. 8a-9a), through passenger trains do move "through" Memphis Union Station on the "Y" leads and terminal tracks.

large metropolitan areas such as Memphis, Tennessee. The court found that it was clear that the trackage involved was "trackage on which interstate passenger service has both originated and terminated since 1912"; that "No passenger seeking to leave Memphis for another state, or seeking to come to Memphis from another state by any of the railroads operating therefrom during all of that period [since 1912] could do so without traveling over some of the trackage of the Memphis Union Station"; that the "now abandoned operations were an integral part of uninterrupted transportation of interstate passengers" (Pet. 44a); and that it believed that it is "the use of these tracks as an integral part of railroad systems developed to accommodate interstate commerce which determines that they constitute 'a line of railroad' within the meaning of Section 1(18)" (Pet. 45a-46a).

The court below found unconvincing petitioners' contentions advanced there as here that the legislative history of Section 1(18) of the Act supported their claim that terminal trackage other than that falling within petitioners' own restricted category of "main" or "through" trackage is exempted from the classification of a "line of railroad". The lower court noted that although "terminal tracks" was a term used in Congressional debates relating to Section 1(18), these words were not included in the exemption clause, even though they were included by Congress in other sections of the Act (Pet. 47a, and note 3).

Significantly, and contrary to the views urged by petitioners, the lower court found that the weight of administrative interpretation by the Commission of the statute involved was plainly in support of the view that trackage, independent of nomenclature given it

by its owners, *used* as the sole means of transportation of interstate passengers, could not properly be characterized as "spur" or "switching" trackage; that repeatedly during the history of the operation of Memphis Union Station the Commission had exercised jurisdiction over the operation of its trackage—including agreements between the tenant railroads for operations over such trackage; that similar interpretations have been made repeatedly by the Commission pertaining to terminal trackage at other union terminals; and that the consistent administrative interpretation by the Commission of the sections of the Act involved is entitled to great weight (Pet. 45a).

The opinions below clearly show that the decisions they support are in accord with substantial judicial precedents, and permit of the final resolution of this controversy. *Jay Street Connecting Railroad, et al.* v. *Meyers, et al.*, 289 F. 2d 356 (2nd Cir.), *cert. den.* 368 U.S. 828; *Meyers, et al.* v. *Famous Realty, Inc., et al.*, 271 F. 2d 811 (2nd Cir.), *cert. den.* 362 U.S. 910; *Meyers* v. *Jay Street Connecting Railroad,* 262 F. 2d 676, 678 (2nd Cir.). Insofar as the rulings require the Commission to inquire into the merits of the abandonments and use of alternate trackage in the light of public convenience and necessity and the public interest, they are in accord with decisions of this Court, *Thompson* v. *Texas Mexican R. Co.,* 328 U.S. 134; *Smith* v. *Hoboken R. Co.,* 328 U.S. 123; *United States* v. *Idaho,* 298 U.S. 105; *Transit Commission* v. *United States,* 289 U.S. 121; *Piedmont, Etc., Ry. Co.* v. *I.C.C.,* 286 U.S. 299; *Texas & Pacific Ry. Co.* v. *Gulf Ry. Co.,* 270 U.S. 266, and the *Southern Pacific* case, *supra* (Pet. 48a-49a), relied upon by petitioners, as they are in accord with the decisions of the Commission, *Boston*

Terminal Co. Reorganization, 312 I.C.C. 373; *Construction by Cincinnati Union Terminal Co.,* 138 I.C.C. 297.

It is clearly evident that the interests of the general public utilizing the facilities of Memphis Union Station for passenger service rendered by its tenant lines would be affected, and the decision as to what service should be performed should not be left to the discretion of private parties to serve solely their own interests.

The operation begun without authority of the Commission by the L&N over trackage of and within the terminal of the IC—such trackage being impressed with the same use and public interest as trackage within Memphis Union Station—clearly was for the reasons set forth above, an operation by L&N over a "line of railroad" of another railroad which required the prior approval of the Commission under Sections 5(2)(a) and 5(4) of the Act.

Necessarily embodied in the statutory framework for Commission protection of the public interest is the interest of the railway employees who have been summarily dismissed (Pet. 11a), and denied the benefits customarily granted to such employees adversely affected in their employment as a result of abandonments or changes in the use and ownership of railway lines. *BMWE* v. *United States,* 366 U.S. 169, 177. The Commission, as a matter of law, 49 U.S.C. 5(2)(f), as concerns proceedings arising under Section 5(2) of the Act, and as an exercise of its administrative discretion as to abandonments under Section 1(18), has required that protection be afforded railway employees adversely affected in their employment as a result of the transactions it authorizes under Sections 1(18)

and 5(2) of the Act. *Seaboard A. L. R. Co. Control*, 312 I.C.C. 803, modified 216 F. Supp. 101; *Seaboard A. L. R. Co. Trackage Rights*, 312 I.C.C. 797; *Gulf, M. & O. R. Co. Abandonment*, 282 I.C.C. 311. As expressly found by this Court in *Interstate Commerce Commission* v. *Railway Labor Executives' Association*, 315 U.S. 373, 378, the imposition of protective conditions for railway employees displaced as a result of transactions of the type here involved is necessarily consistent with public convenience and necessity in that they will strengthen the national transportation system "through their effect on the morale and stability of railway workers generally".

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 273

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, MEMPHIS UNION STATION COMPANY, AND UNION RAILWAY COMPANY, *Petitioners,*

v.

INTERSTATE COMMERCE COMMISSION, CITY OF MEMPHIS, TENNESSEE, and RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATE COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR THE RESPONDENT CITY OF MEMPHIS, TENNESSEE, IN OPPOSITION.

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IN THE

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No. 273

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, MEMPHIS UNION STATION COMPANY, AND UNION RAILWAY COMPANY, *Petitioners,*

v.

INTERSTATE COMMERCE COMMISSION, CITY OF MEMPHIS, TENNESSEE, and RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR THE RESPONDENT CITY OF MEMPHIS, TENNESSEE IN OPPOSITION.

Respondent respectfully submits that the petition presents no issue warranting consideration by this Court; that the judgment of the court below is correct; and that the Petition for a writ of certiorari should be denied.

Opinions Below

The opinion of the court below is not yet reported and is reproduced as Appendix D, pages 36a-50a, to the petition for a writ of certiorari. The district court opinion, which it affirms, is reported at 230 F. Supp. 456 and is reproduced as Appendix B, pages 7a-25a, to the petition.

Jurisdiction

The judgments of the court below were entered March 31, 1966. Petition, pp. 51a-55a. The petition for a writ of certiorari was filed June 21, 1966. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

Questions Presented

Petitioners, the Louisville and Nashville Railroad Company, Missouri Pacific Railroad Company and Southern Railway Company, after more than half a century of service in the transportation of interstate passengers to and from Memphis, Tennessee, via the Memphis Union Station Company, which they own, together with the St. Louis Southwestern Railway Company, on April 1, 1964, ceased using the terminal building and the appurtenant rail lines without having obtained authorization for the abandonment from the Interstate Commerce Commission. Memphis Union Station Company thereafter conducted no operations; two of the other railroads, MoPac and Southern operated their passenger trains to and from reopened passenger terminals, and the third railroad, the L&N operated over the tracks of the Illinois Central Railroad Company and entrained and discharged passengers at the terminal of that railroad. The two principal questions, as posed by the court below (Petition, pp. 43a-44a) were:

> (1) Was the trackage of the Memphis Union Station which was abandoned by appellants in 1964 a "line of railroad" within the meaning of Section 1(18) [of the Interstate Commerce Act, 49 U. S. C. 1 (18)] so as to require ICC approval prior to abandonment?
>
> (2) Where at least one of the appellants entered into a trackage use agreement with another railroad in order to operate from alternate facilities, did such an agreement require prior ICC approval under Section 5(2)

and 5 (4) [of the Interstate Commerce Act, 49 U. S. C. 5(2) and 5(4)]?

On complaint of the Interstate Commerce Commission, the district court answered both of these questions affirmatively, and the court below, on appeal, affirmed.

Statutes Involved

The relevant statutory provisions, 49 U. S. C. 1(18)-(20) & (22) and 49 U. S. C. 5(2), (4) & (8), are set out in Appendix A, pages 1a-6a, to the petition for a writ of certiorari.

Statement

There is no dispute as to the facts, and we accept as substantially correct the petitioners' summary, at pages 3-9 of the petition for a writ of certiorari, their statement being a paraphrase of that of the court below. Petition, pp. 39a-43a.

Argument

This case presents no substantial question warranting consideration by this Court. Whether cessation of operations over the considered tracks required advance authorization by the Interstate Commerce Commission as an abandonment of line of railroad was a matter well within the competence of the court below, as well as the district court before it, to determine, and no occasion is presented by the petition for a writ of certiorari for plenary review by this Court. *Jay Street Connecting Railroad, et al.* v. *Meyers, et al.*, 288 F. 2d 356 (2d Cir. 1961), cert. den., 368 U. S. 828; *Meyers, et al.* v. *Famous Realty, Inc., et al.*, 271 F. 2d 811 (2d Cir. 1959), cert. den., 362 U. S. 910. The courts' decision on that issue, as well as on the attendant question whether the trackage agreement providing for service thereafter to and from the terminal of another railroad required Commission approval, accorded with the decisions of this Court, *Thompson* v. *Texas Mexican R. Co.*, 328 U. S.

134; *Smith* v. *Hoboken R. Co.*, 328 U. S. 123; *Piedmont, etc. Ry. Co.* v. *I.C.C.*, 286 U. S. 299; *Railroad Commission* v. *Southern Pacific Co.*, 264 U. S. 331, as they did with those of the Commission. *Boston Terminal Co. Reorganization*, 312 I. C. C. 373; *Construction by Cincinnati Union Term. Co.*, 138 I. C. C. 297.

1. Section 1(18) of the Interstate Commerce Act declares that "no carrier by railroad subject to this part shall abandon all or any portion of a line or railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment." That the Memphis Union Station Company and the proprietary railroads are carriers by railroad under Part I of the Interstate Commerce Act is beyond doubt, and their abandonment of all or any portion of a line of railroad, or the operation thereof, clearly falls within the requirement of section 1(18) unless within the exemption of section 1(22). That section 1(22) permits abandonment without Commission authorization of "spur, industrial, team, switching or side tracks, located . . . wholly within one State." "It is clear that the [track] here in question is not a track of this character." *Alabama Ry.* v. *Jackson Ry.*, 271 U. S. 244, 249.

The tracks in question, although admittedly of limited length, comprise the entire system of lines of the Memphis Union Station Company. One or more of them necessarily must be deemed to be the line of railroad of that carrier, no matter how subordinate others of the tracks might be. Moreover, one or more of the tracks afford the only connection between the terminal building of the Memphis Union Station Company and the tracks of the proprietary railroads. They are "the sole terminal facilities held out to the public for access to the main line. So long as these tracks are impressed with such an additional function they

are, for purposes of § 1(18)-(22), inseparable from the main lines and they may not be abandoned without an I. C. C. certificate of public convenience and necessity." *Myers* v. *Jay Street Connecting Railroad*, 262 F. 2d 676, 678 (2d Cir. 1959).

If, as we maintain and the court below found, the Memphis Union Station Company may not discontinue operations over its tracks and abandon them without Commission authorization, neither may the proprietary railroads, which have operated over the tracks pursuant to trackage agreements, the most recent of which was approved by the Commission in Finance Docket No. 21933, *Memphis Union Station Co.—Extension of Operating Agreement*, on April 19, 1962. Commission authorization must be secured before the parties can desert the tracks. *Thompson* v. *Texas Mexican R. Co., supra; Smith* v. *Hoboken R. Co., supra.*

The court below, at page 49a of the Petition, properly noted:

> Trackage at the Memphis Union Station which had previously been used for continuous railroad passenger service in interstate commerce was a part of several national railroad systems. It was created, as this record clearly shows, at great expense. It is properly termed, as the District Judge held, a subject of national concern. We do not think that Congress intended such facilities to be exempted from regulation.

The effect of the railroads' unilateral action, consummated without Commission authorization, quite obviously is to leave interstate travelers scattered at several terminals within Memphis, without adequate provision having been made for their transfer. *Cf. Chicago* v. *Atchison, T. & S. F. R. Co.*, 357 U. S. 77. Moreover, as the district court observed, at page 11a of the Petition, "Shortly after the termination of operations at Union Station, 120 of its em-

ployees were discharged, of whom about 75 have not obtained other employment." *Cf., Interstate Commerce Commission* v. *Railway Labor Assn.*, 315 U. S. 373.

2. The commencement of operations by the Louisville and Nashville Railroad Company over the tracks of the Illinois Central Railroad Company, to and from the latter's passenger terminal, pursuant to an agreement negotiated between these two carriers, required Commission authorization under section 5(2) of the Interstate Commerce Act, unless such operations were limited to the use of "spur, industrial, team, switching, or side tracks." 49 U. S. 1(18). As the rail lines appurtenant to the passenger terminal of the Illinois Central Railroad Company are no more within the exemption than are those of the Memphis Union Station Company, for the reasons previously discussed, the L&N joint use of them without approval of the Commission was violative of the law. 49 U. S. C. 5 (4).

A great tragedy struck the City of Memphis and adjacent areas when the petitioner railroads unauthorizedly abandoned the Union Station on April 1, 1964. Southern returned to its Lauderdale Freight Yards and MoPac removed itself to its freight yards on West Calhoun. Both of these railroads had found these yards unfit for passenger service when they moved from them in 1912 to the Union Station.

The L&N in its unauthorized move took refuge in the Central Station on South Main. We now find these railroads scattered over the city. The antiquated locations of the Southern and MoPac could offer no adequate and decent facilities to passengers. While the Central Station provides reasonably good accommodations to passengers, due to the widely separated locations of these railroads, passengers cannot make proper connections on time. Havoc and chaos have been created by the unauthorized move on

the part of the petitioners to those desiring transportation by rail.

The City of Memphis is known as the capital of the Mid-South. It ranks 20th in population in our nation. It serves a metropolitan area of approximately 800,000 people and approximately 1.2 million in the surrounding areas. Thus, by illegal abandonment of the Union Station the petitioners, instead of helping a great and rapidly-growing metropolis, have designedly done their best to return our transportation system to the horse and buggy era.

Conclusion

For the foregoing reasons, it is respectfully submitted that the Petition presents no issue warranting consideration by this Court; that the judgment of the court below is correct; and that the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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*137 **WILLIAM B. INGRAM**

The said witness, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. Patrick Johnson (Resumed).

Q. Mayor, pursuant to an invitation, did you visit the Missouri Pacific last evening after we left the court?

A. Yes, sir, between 5:30 and 6:00 o'clock.

Q. And did you also visit the Southern?

A. Yes, sir.

Q. Were photographs taken down there yesterday?

A. Yes, sir.

Q. Were you present at the time?

A. Yes, sir.

Q. I believe you appeared here in one or two of those pictures, is that correct?

A. Yes.

Q. Mayor, I would like for you to look at those photographs there. Count the number, and I would like to make them exhibits to your direct examination, and you might explain to the Court what those photographs represent.

A. I believe there are twelve. It looks like five taken

*Numbers appearing in outer edge of text indicate page numbers of original stenographic transcript of testimony.

at the southern, and I believe these others—seven
138 were at the Missouri Pacific.

Q. Seven on the Missouri Pacific and five on the Southern?

A. Yes. And we would have taken others if we hadn't run out of time. We went to the Missouri Pacific first and then we went to the Southern.

MR. JOHNSON: If the Court, please, I would like to make the ones pertaining to the Southern Exhibits to his direct examination.

THE COURT: I think a better way to do it would be to have him testify as to each picture, as to what it purports to show, and then we will mark it and give it a different number.

Direct Examination, by Mr. Johnson.

Q. What is that there?

A. I have a picture here, Your Honor, which shows me pointing down at the cracks in this little gangway, I guess you would call it, planks that lead out from Southern's terminal facilities onto the station platform. I believe that's Mr. Kirsch, one of the lawyers in the matter, standing there with me. This picture shows the wide cracks that are in there, that are between the boards that are
139 used for this gangway. They also show the deteriorated condition of the platform where this gangway type of thing joins the station platform. It apparently—apparently dropping that thing down against it, making it

fit in there, get it against the edge of the platform. Right here you see this platform is covered by this thin layer of plywood that I was talking about yesterday, and this hole right there by my toe has been worn out where the people go back and forth, or where the drawbridge comes.

THE COURT: Let's give it the next number.

MR. JOHNSON: That will be Exhibit 5. (The photograph above referred to was marked Exhibit 5 to the testimony of the witness, and same will be found among the exhibits hereto.)

Direct Examination, by Mr. Johnson.

Q. And what does this depict?

A. This is another picture of the drawbridge thing I was talking about. This side over here in the righthand side of the picture where the children are standing is the station part of it, and over here where it goes out to the
140 extreme left side of the picture is the end where the drawbridge joins the station platform. That is not included in the picture, however. You see this saw-horse type of thing that is put under there to support this drawbridge type of thing. You can see the cracks even from this angle in there. It would be dangerous to women and, of course, these children playing around in there, and I understand some of them had to tell some of the kids to get off this thing. It was dangerous for them to be there. They could fall under here to those tracks.

THE COURT: All right. Give that No. 6.

(The photograph above referred to was marked Exhibit 6 to the testimony of the witness, and same will be found among the exhibits hereto.)

Testimony of William B. Ingram

Direct Examination, by Mr. Johnson.

Q. This Exhibit 6 is at the Lauderdale Street Station of the Southern?

A. Yes, sir.

Q. Now, Mayor, I would like to ask you this question—this picture shows there is a rail down there. Is this
141 removable?

A. Yes, sir; that's a removable thing, and I got through with my other appointments last night and went back down there to see what the condition of the station was. I was hoping to get down there before the train pulled out, but they had taken this up, and it comes up in two sections, and they had put it out all along in here, and this is all conglomerated area of just apparatus, parts of things, which, of course, would be dangerous for people to walk around there in that vicinity. They are liable to stumble or fall, or it is liable to fall over on them. This is the part—this is the track which I was describing yesterday, which I am told is used to shove in the boxcars to the north end of the warehouse, which the next picture will show more clearly where the freight cars are shoved in back up here, and that's used for a warehouse, I understand. There is some company here that is using that for car loading (indicating throughout).

Now, there is no shelter between here and here up over this. There is no shelter over this area between the corner of this building, which is the south or southeast portion of the warehouse that extends on the other side of the
142 station, but there is no shelter where these young boys are standing at all. That's all open area. The

passengers have to walk in through there and meander around until they find their way (indicating throughout).

Q. What is this photograph?

A. This picture is another view of the drawbridge that I just mentioned, and over here on the right side of the picture where you see this rear wheel of this little truck-trailer thing, that's where I was talking about the hole is that would be dangerous to pedestrians walking in there, causing them to stumble or trip or fall. Right along here, this shows very well the condition of the platform where they don't have the plywood covering it, you see. The boards, some of them, are warped, and there are holes between them. Some of them are loose, not nailed down as tightly as they should be, and they could cause the women and children particularly to be likely to trip or fall or some aged person. We did see an old gentleman down there on crutches. He had to be very cautious about how he moved about. Now, this little truck thing you see there—this is the same place where the pedestrians go across to come out of the station, which is the white building right here
143 immediately behind the driver of that truck, is where the passengers go in to get the tickets and where they have the waiting room and this, of course, was taken during the time we were down there, and at that time I think the train was about to be loaded.

Anyway, there were a lot of people there, and these trucks were running in and out and up and down the platform, and in my opinion it is a hazardous condition to be allowed to continue, particularly to young children and women. This stuff could fall off of that truck very easily, and I don't know how long this particular one was, but

there were some there that had several of these little trailers attached onto them.

THE COURT: All right. Let's give that the next number.

(The photograph above referred to was marked Exhibit 7 to the testimony of the witness, and same will be found among the exhibits hereto.)

Direct Examination, by Mr. Johnson.

Q. Mayor, that photograph, Exhibit 7, was this truck with the little trailers on it, was that shuttling back
144 and forth over the passageway that the passengers were waiting to board that train on?

A. Yes, sir. After looking at it yesterday and seeing the condition and operation, it appears to me, and from the place that they put this plywood that must have been put down there for use by those trucks and all rather than the pedestrian traffic, because it appears from the use of that plywood that the trucks drive on it, and the trucks, from what I observed, were using it, and the people had to stand over there where the plywood wasn't put down.

Now, the next picture—I just took a broom that they had there on the thing, and this showed an old garbage can—not an old one, a new one, but that's the type of trash collector they have with the lid there on it. It's hanging up on one side, and I used the broom here to point out one of the cracks in the floor there. Now, here in the lower right-hand corner you can see where they put down this plywood strip on the west side of that platform. Now, as I stated yesterday, on the west side of that platform they didn't

have one, and that is true on the north side of this
145 little drawbridge thing. On the south side they have this strip put down there, and on this side over here, on the left-hand side behind me, is another strip of plywood put down on the station platform, and there is one right here. Down at the far end of the—that's the southeast end of the warehouse, they have another big drawbridge where they load in also some freight and mail, I think, and these little trucks and their trailers, and some of them have as many as eight or ten attached to them, drive up and down these strips of plywood and around on this strip of plywood to go back down this way, and then they, of course, come up these plywood strips and go in across that passenger bridge apparently when they take in any baggage and trunks and packages and things that are shipped.

Now, if Your Honor please, if you will notice right here, this is a post on the station platform in the center of it, which supports the roof for the shed that extends out over the platform. It doesn't extend out over the train or over this other track that runs between the platform and the passenger facilities. Along in here, these supports
146 have been boxed in over the years with apparently scrap lumber to apparently give them protection from the wheels and the sides of these little trucks that are hauling freight along in there to keep them from beating it up or jarring it down, chewing the edges out of it. But even notwithstanding that, something is knocked off these little boards and you can see from the floor up about two or three feet they have this post boxed in there, and on this side you can see where one of the planks have been knocked off. We examined the condition of those

things all along in there, and in this next picture you can see where the post is right on the right-hand edge of the picture near the top corner, and you can see the other posts and if you look down there—this is not a clear picture, because we didn't have a flash bulb, and it was taken in the shade and all and didn't make a very good picture, but you can see how this post has been chewed up. Now, along the bottom there where they have nailed those planks in there, you can see they haven't been pulled off, and they have left a lot of rusty nails sticking out which, of course, would tear a man's trousers if he walks close by or would
147 injure some children if they happened to stumble against it or get too close to it, or would certainly injure a lady's leg and being rusty as it is, it is certainly hazardous to the health and life of any person who might get infected by a tetanus infection if they were injured and had to get on the train and didn't have time to get first aid treatment.

THE COURT: Mr. Johnson, I don't believe we have to particularize to this extent. The Court can take note of these pictures.

Mark that the next exhibit.

(The photograph above referred to was marked Exhibit 8 to the testimony of the witness, and same will be found among the exhibits hereto.)

THE WITNESS: I am sorry. I thought you were interested in whether it is dangerous to continue operation of this station.

MR. RUSSELL: I want to object to the Mayor continuing to answer after the Court has made the remark. We have patiently stood here and restrained ourselves.

The pictures speak for themselves. We agree with
148 the Court.

THE COURT: We think this: The pictures do speak for themselves, and the Mayor can tell us in general what they purport to show, but I do not think we have to go into the detail that we have been going into. Of course, we are concerned on this preliminary injunction as to the adequacy of the facilities, but we don't have to go into the detail we have been going into.

MR. JOHNSON: All right, sir.

Q. Now, what is that picture?

A. Well, this is not as clear as we would like to have it, and it is difficult, Your Honor—of course, I realize the photographs speak for themselves, but some of these things I have testified are not shown in the photographs. You can't tell the nails are rusty from the photographs, for instance.

This is one of the Southern's passenger cars, and this is me standing here in the position about to board the car.

I had just talked with the attendant there who is a
149 negro man, in a white jacket and a cap and apparently was in some representative capacity, and when I first walked up there, I asked him about how the passengers boarded the trains. He proceeded to demonstrate. My reason for asking that was because the door was open on the train apparently ready to admit people to get on and they did get on before I asked him to demonstrate how they got on and what measures of protection did they take in order to guard against somebody stepping off this plat-

form into the crevice between the platform and the train itself, which was approximately a foot wide and three or four feet deep.

Now, you will notice here—this is the station platform along here, the edge of which can be seen right here next to the train, and this is one of the rails, and where I am standing is a plywood strip which has been laid down on the platform which I mentioned before. It sets out about two plank widths, and they look to be about two by six. Of course, the crack between the planks is very clear, and I asked him what protective measures did they take to prevent a child or a lady or an aged person or someone with bad sight from falling into that crevice there between the edge of the platform and the edge of the car, so he proceeded to show me. Before I had said anything about it, you could walk right in—it was accessible, and no effort was made to do anything apparently. He took this board here, which can be noticed right at my front toe on my right foot, which is a piece of plywood, and it looks like about an inch or three-quarters of an inch plywood, and about two feet wide or maybe thirty inches wide, and the first time, he put that from the station platform over into the floor of the entryway or vestibule of the railroad car. At that time this thing here, which you see along here, which is folded up against the edge of the door, was laying down so that the grated part of the vestibule floor there would be level and extended all the way out to the extreme edge of the railroad car. When he put that piece of plywood on it, it was up on the other side, in the car, and if a person coming out of the car—I did get in there, and I could stick my whole foot under the edge of that board, and, of course, a person with bad vision or

who was not watching what he was doing came out there, it would be very hazardous for a person to try to exit in that fashion, so I showed it to him, and he said that that was the way it worked, and then he got the plywood
151 board off of the thing and raised this part of the railroad car up, which leaves the steps uncovered, and then he put this plywood board from the station platform over onto the top step, the last one just before you get to the top of the floor of the railroad car, which meant that a person leaving the station platform in order to walk on to the railroad car would have to walk across this plywould board here and would angle down at about three, five percent, maybe ten percent grade to the first step. You would have to walk there and then step back up onto the floor of the railroad car.

I am standing here now for the purpose of showing you how the edge of that board sticks up on the platform, railroad platform, and that shows how my toe could get caught on the edge of that auxiliary plywood thing there that is used to put across that crevice I was talking about, you see.

THE COURT: We see. Let's mark that.

(The photograph above referred to was marked Exhibit 9 to the testimony of the witness, and same will be found among the exhibits hereto.)

152 **Direct Examination,** by Mr. Johnson.

Q. Mayor, that concludes the photographs on the Southern.

A. Other than things I could mention which I think are pertinent—

Testimony of William B. Ingram

Q. I will ask you.

Did you examine the waiting room and see the condition of the passengers down there waiting on this out-going train?

A. Yes, sir.

Q. Will you describe that to the Court, please?

A. If Your Honor please, I mentioned yesterday what a small waiting room they had and what inadequate facilities they had. We went down there yesterday afternoon. It must have been about twenty or thirty minutes before the train was to pull out, or maybe a little bit longer, but the people began to gather there, and so I examined the facilities inside again. While we were there examining those facilities I have just mentioned, the people did come. They filled up the waiting room. I counted about maybe fifteen or more people sitting down, but that was all the sitting space that was provided for apparently in the wait-
153 ing room itself, and people had to sit on their luggage, and they were sitting out—before we left, they were sitting out in the hallway on their luggage. They were sitting on this stairway that I mentioned that led up to the G. M. & O. offices upstairs, and they were sitting around out in front of the building on their luggage and waiting in their cars outside, waiting in the taxis outside. They were standing around outside on the station platform, and, of course, some of them had children with them that they had to watch out for that were outside on the platform running around, at least in a position if they were not guarded carefully, to get in front of one of these little trucks that I just described.

It was a very undesirable condition, and I think it was certainly most unsatisfactory and should not be tolerated another day.

THE COURT: Now, if you are through with the Southern, let's move on.

Direct Examination, by Mr. Johnson.

Q. Are you through with the Southern?

A. Outside on that platform they also had laid some great big sheets of boiler plate steel, which apparently had been used to lay over in the loading of the boxcars.
154 They were bent, had a hump, and that would allow somebody to catch their toe under that.

I examined the facilities in the toilet facilities. I didn't go into the ladies' room, because there were a lot of women there. I did go into the men's room and looked around. The doors there to the water closets or the toilets—I embarrassed some gentlemen, because it didn't have a latch on it. It couldn't be locked from the inside, and I looked around, and, of course, there was no place for a person if he is faint or ill or sick, to sit down and rest in the rest room at all.

THE COURT: Let's go on to the Missouri Pacific.

THE WITNESS: One other thing—excuse me—I just want to be fair now, because some of the Southern Railroad lawyers mentioned something about I didn't say anything about the air conditioning they had down there yesterday, and I just want to be fair. We looked around there. They had filing cabinets set out in the

hallway, which, of course, diminished the space
155 available for the use of pedestrians. They had shelves out in the hallway by the ticket office. There was only one little makeshift ticket office, which was set up by some piece of board being put across the middle of a door. There were no baggage lockers available at all. There was only one telephone available, and some lady was using it, I think, the whole time we were there, and there was a line standing up behind her, and nobody could get a telephone to call.

The air conditioner, which Mr. Laughlin asked me to look at, and he represented that the whole station was air conditioned—well, fortunately we had a cool evening yesterday, but that station in that condition with the people that were there yesterday during the hot weather that we have had the few days before, it would have been unbearable. They had an air conditioner, apparently it was an air conditioner and some type of heating or cooling unit in the waiting room itself built into the window. Of course, the other window was latched down, closed, and the air condi-
156 tioner was not on yesterday, and it was stuffy and uncomfortable and undesirable, a very undesirable condition yesterday even as cool as it was.

Direct Examination, by Mr. Johnson.

Q. Mayor, are there any restaurant facilities there?

A. No.

Q. Any taxicab stands there?

A. No taxi stands as such. Taxis drove up and left as we were there.

Q. Bringing passengers?

A. Yes, sir.

Q. Now, will you take the photographs of the Missouri Pacific and proceed to explain those?

A. If Your Honor please, this photograph here is a southwestern view, looking southwestern, and the white part of the building there is where they have the passenger terminal facilities. This sign where you see "Missouri Pacific Lines Passenger Station," that's a little metal awning there; that's the entrance door, and that's the only shelter at all for the entrance or exit to and from
157 the trains. They go into there, and there is a ticket office. I believe it is on the left. You go inside and turn to the right, and they have also a waiting room in there with some benches in it. It is not air conditioned, and they had—however, I think they had a floor fan on a tall pedestal, which was blowing, of course, and relieved the condition there somewhat, yesterday being not too hot a day, and it was fairly comfortable. But this is a picture here that shows the Missouri Pacific Station. These are tracks, which I mentioned yesterday, and if a person is there and didn't have motor transportation to go from the station down to Central Station, and had to walk, they would have to walk across these industrial switch tracks, and there are about four or five of them between here and the other station.

THE COURT: All right. Mark that as an exhibit.

(The photograph above referred to was marked Exhibit 9 to the testimony of the witness, and same will be found among the exhibits hereto.)

Testimony of William B. Ingram

Direct Examination, by Mr. Johnson.

Q. Now, what is that photograph?

158 A. This is a view looking eastwardly along the south side of Calhoun Street, and in the right-hand upper corner that shows a view of the building there where the passenger entrance is. You can see just what a small shelter there is over that door. These rails have been built out of railroad irons and put up, so I am told, to keep vehicles from parking in front of the building obstructing the entrance to it. As you can see, this is in an industrial area along in here, and at nighttime, of course, only one street light is way down the street, down there, and I think that's where you get down to Front Street along in there. But there are no sidewalks between here and the next block down there, and then, of course, the sidewalk condition is in a deteriorated fashion. The railroads there, several tracks I mentioned that would have to be crossed, and they might be shoving boxcars back and forth there. This has all been recently paved with new asphalt, but there is no marking here, and traffic can come in here right sharply and endanger people who might be in front of the dark station.

THE COURT: Let's give that the next number.

(The photograph above referred to was marked
159 Exhibit 11 to the testimony of the witness, and same will be found among the exhibits hereto.)

Direct Examination, by Mr. Johnson.

Q. What is the next picture?

A. This shows the west side of the Missouri Pacific building with the door that opens inside, opens into the building. It has on it "Waiting Room." This is a blackboard type of sign that I mentioned yesterday where they write up in chalk about the times coming in and leaving.

THE COURT: All right. Give that the next number.

(The photograph above referred to was marked Exhibit 12 to the testimony of the witness, and same will be found among the exhibits hereto.)

Direct Examination, by Mr. Johnson.

Q. What is this picture?

A. This picture shows the station platform. You can see this break, this part here—that's on the south side of the portion of the building that I just mentioned, and
160 this platform here leads along the entire length of the south side of that building, which is used for a warehouse, but the front portion, the two-story part is used for an office building and the passenger facilities. This plank platform runs along the south side there up to the paved part, which goes into the door which I just described, the building which I just showed you, and, of course, you can see the width of the cracks there and the general condition of that platform there and the distance out where the car, the passenger car is from the side of the platform.

MR. JOHNSON: That will be exhibit 13.

(The photograph above referred to was marked Exhibit 13 to the testimony of the witness, and same will be found among the exhibits hereto.)

Testimony of William B. Ingram

Q. What is this next picture?

A. This picture here shows another view of the platform and with the car door open there and where the steps lead down. Now, we talked to the employees there, and they told us that they don't allow the passengers to get off this train into this platform here, because the platform
161 is higher than the lowest step, see, but not as high as the highest level of the freight—of the passenger car, and, of course, it is about two and a half feet out from this car here to the edge of the platform, and this would be a very dangerous arrangement. They don't allow that, so they put up a sign in order to keep people off of this platform, because of the condition of the platform, because of the distance from the platform to the side of the car, which is obvious. They put up a sign here that says "Danger beyond this point." They want to keep people off, they told us that they had to—

THE COURT: How do they get people on the trains?

THE WITNESS: I was told that they opened the other side of the train in a fashion similar to this (indicating), which yesterday it was closed. It was closed up as if it were ready to run, but they tell me they let the other side down and let it open like this, and they step right out on the pavement.

THE COURT: So they board it from the ground level?

THE WITNESS: Yes, sir.

162 **Direct Examination,** by Mr. Johnson.

Q. Mayor, that "Danger" sign there, about how far, roughly, is that from the entrance or the exit door to the station?

A. Well, this picture shows it better here—

THE COURT: Well, let's mark that other one first.

(The photograph above referred to was marked Exhibit 14 to the testimony of the witness, and same will be found among the exhibits hereto.)

THE WITNESS: Here is another picture, which shows the same sign, and has a little rail here that has been built along at the end of the track, and you can see it kind of slants down a little bit, and this pavement runs up on the north side of that up to the edge of the building, and then the plank stops right there at the pavement. That's not shown in here, I don't believe. But this sign had been erected to keep people off that platform and keep them from trying to board the train in that station.

THE COURT: All right, give that the next number.

163 **Direct Examination,** by Mr. Johnson.

Q. That's just a few feet from where the people come in and go out?

A. Right. On the left side of this is where people go into that door, the picture of the door that I just showed you.

Testimony of William B. Ingram

MR. JOHNSON: Make that an exhibit, please.

(The photograph above referred to was marked Exhibit 15 to the testimony of the witness, and same will be found among the exhibits hereto.)

Direct Examination, by Mr. Johnson.

Q. Now, explain that photograph.

A. This photograph here is another shot looking south, and in the left-hand corner, the edge here, is a picture of that passenger car which I just mentioned there which showed up on the other side of the car in that other picture, that "Danger don't go beyond this point" sign, and this has been paved down here with asphalt, and on this track the other night was where I saw the passenger car, and getting off the train here walking, of course,
164 they have to be careful about this gravel, and I don't believe that pavement goes all the way up under the car enough to where they don't have to watch out for that gravel when they get on the train. But they have to walk from here to that door to get in there, and I stepped it off, and it is about twenty steps, and there is no shelter over that place where they get off the train to the station.

You see these trucks here or these trailers, whatever you call them, which apparently have been used for baggage and freight, lined up along there. Here you see a mail truck backed up to here. We asked the station employees about the nature of the traffic there, and they indicated that the trucks and the other vehicular traffic has to go right down alongside those cars, the passenger cars, and head in down there and back up, and apparently there is

considerable traffic going down there because the station employees said they had to stand out there and watch and guard people getting on or off the train, to keep them from being run over by these mail trucks or by the freight handlers using these big trucks that they push around, you know, with the big wheels, which I am sure everyone
165 has seen.

THE COURT: All right, mark that the next exhibit.

(The photograph above referred to was marked Exhibit 16 to the testimony of the witness, and same will be found among the exhibits hereto.)

Direct Examination, by Mr. Johnson.

Q. Mr. Mayor, are there any cafe or restaurant facilities at the Missouri Pacific Station?

A. No, sir.

MR. RUSSELL: Pardon me. I didn't understand that.—Any what?

MR. JOHNSON: Any restaurant or cafe facilities, and the answer was no.

THE WITNESS: Yes.

Direct Examination, by Mr. Johnson.

Q. Any taxi stands there?

A. No, sir.

Q. If a person used the City of Memphis bus, how far would they have to walk?

A. They would have to walk down to Main Street, which I think is about five blocks.

166 Now, I examined the condition of the waiting rooms and the rest rooms in that station also, if Your Honor please; and there were no passengers down there, so I asked the employees to let me go in and look at the women's rest room as well as the men's.

In both rest rooms there they do have some facilities for sitting down in case a person were faint or needed to rest. They have painted it up rather recently. I did notice in both of these places, however,—of course they didn't have facilities for latching the doors to keep somebody from straggling in or opening it up while another person was using it. I noticed in the men's room and in the women's room also, there were some holes in the wall, which were either the result of being knocked out for a pipe that used to be there or a rat hole, and in the Ladies' rest room I noticed something that did look like a rat hole, and it apparently had attracted their attention at one time, because they had endeavored to tack it over with a piece of tin, and it didn't keep that rat out, or something caused the thing to work out and open again, and I think that's a very unwholesome condition to maintain in a passenger terminal where a woman is going to have to use the
167 rest room right in there where she is likely to be—in a very—how would we describe that?

MR. ROBINSON: Inopportune may be the word you are looking for.

THE WITNESS: Well, it would be a rather uncomfortable position for a woman to be in and also meet a mouse.

Testimony of William B. Ingram

The same condition existed in the men's rest room, and that being a passenger terminal and also a freight terminal and with the handling of various and sundry type of freights, I could see how, if that continued over a period of time that would be an access for mice or rats or things of that sort that might happen to frequent a railroad freight station.

MR. JOHNSON: That is all.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 273

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, MEMPHIS UNION STATION COMPANY, AND UNION RAILWAY COMPANY, PETITIONERS

v.

INTERSTATE COMMERCE COMMISSION, CITY OF MEMPHIS, TENNESSEE, AND RAILWAY LABOR EXECUTIVES' ASSOCIATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 36a–50a) is reported at 360 F. 2d 44. The opinion of the district court (Pet. App. 7a–25a) is reported at 230 F. Supp. 456.

JURISDICTION

The judgments of the court of appeals (Pet. App. 51a–55a) were entered on March 31, 1966. The petition for a writ of certiorari was filed on June 21,

228-809—66

1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the Interstate Commerce Act, 49 U.S.C. 1(18)–(20), (22), and 49 U.S.C. 5(2), (4), (8), are set forth in Appendix A, pp. 1a–6a, to the petition.

QUESTIONS PRESENTED

1. Whether, in light of their usage, value and importance to interstate commerce, the railroad tracks in the Memphis Union Station constitute a "line of railroad" or "any portion of a line of railroad" within the meaning of Section 1(18) of the Interstate Commerce Act, which may not be abandoned without the Commission's approval.

2. Whether the agreement between two of the petitioners for the joint use of the tracks belonging to one of them required prior Commission approval under Sections 5 (2), (4) of the Act.[1]

STATEMENT

On April 1, 1964, after transporting interstate passengers to and from Memphis, Tennessee, via the Memphis Union Station, for more than half a century, petitioners abandoned the station and the numerous tracks leading into it (Pet. App. 57a). The

[1] Since the test of the Interstate Commerce Commission's jurisdiction over abandonments (Section 1(18)) is identical to that of its jurisdiction over trackage-use agreements (Section 5), we shall not discuss separately the second question presented by the petition.

abandonment of these facilities, created "at great expense" (Pet. App. 49a), was effected without application to, or prior approval of, the Interstate Commerce Commission. As a result of the abandonment, interstate passengers were obliged to use several smaller terminals at scattered points within Memphis, and 120 employees lost their jobs; of these, 75 have not found other employment (Pet. App. 11a). Also without Commission approval, petitioners L & N and Illinois Central entered into an agreement for the joint use of the latter's tracks and the terminal facilities incidental thereto in Memphis.

On a complaint filed by the Interstate Commerce Commission, and after full hearing, the United States District Court for the Western District of Tennessee permanently enjoined the "continued abandonment, without authority from the Interstate Commerce Commission, of a line of railroad and the operation thereof at Memphis Union Station * * * in violation of Section 1(18)–(20) of the Interstate Commerce Act," 49 U.S.C. 1(18)–(20) (Pet. App. 32a). The court also enjoined "the continuation and effectuation" of L & N and Illinois Central's trackage-use agreement (Pet. App. 33a). The court of appeals affirmed (Pet. App. 51a–55a).

ARGUMENT

As petitioners recognize (Pet. 10), the trackage within the Memphis Terminal constitutes a "line of railroad" or a "portion of a line of railroad," the abandonment of which requires prior Commission ap-

proval[2] under Section 1(18) of the Act, 49 U.S.C. 1(18), unless it falls within the exemption of Section 1(22) for "spur, industrial, team, switching, or side tracks, located or to be located wholly within one State * * *" (49 U.S.C. 1(22)).[3] The courts below properly held, in accord with numerous administrative and judicial precedents, that that narrow exemption is inapplicable here. There is no occasion for further review.

It cannot seriously be contended "that all stations, whatever their character and relation to transportation, are outside the authority granted by section 1(18); for 'a line of railroad' does not cease to be such merely because it is called, or embraced within, a 'station'." *Boston Terminal Co. Reorganization*, 312 I.C.C. 373, 377. Indeed, for more than forty years, the Commission has asserted jurisdiction, pursuant to both Section 1(18) and Section 5 of the Act, over trackage embraced within railroad stations. See, *e.g.*, *Public Convenience Application of Kansas City Southern Ry.*, 94 I.C.C. 691 (jurisdiction over "terminal tracks" at Independence, Mo., depot); *Abandonment of Line by Chicago, Rock Island & Pac. Ry. Co.*, 131 I.C.C. 421, 429, 431 ("tracks in the

[2] Commission approval, had it been sought, could have been conditioned upon the making of adequate provision for the transfer of passengers between terminals (*Chicago* v. *Atchison, T. & S. F. R. Co.*, 357 U.S. 77) and for the protection of displaced employees. *Interstate Commerce Commission* v. *Railway Labor Executives Assn.*, 315 U.S. 373.

[3] The requirement of Commission approval for trackage-use agreements (49 U.S.C. 5(2)) similarly does not apply to contracts for the "use of spur, industrial, team, switching, or side tracks" (49 U.S.C. 1(18)). See n. 1, *supra*.

terminals at Denver and Colorado Springs"); *Construction by Cincinnati Union Terminal Co.*, 138 I.C.C. 297 (construction of passenger station and "lines of railroad incident thereto"); *Atchison, T. & S.F. Ry. Co. Operation*, 224 I.C.C. 39; *St. Louis, S.F. & T. Ry. Co. Trackage Rights*, 267 I.C.C. 30, 35–37; *Boston Terminal Co. Reorganization, supra.*[4] Also cf. *Wheeling & L.E. Ry. Co.* v. *Pittsburgh & W. Va. Ry. Co.*, 33 F. 2d 390 (C.A. 6), certiorari denied, 280 U.S. 593.

Whether, in a particular case, trackage constitutes a "line of railroad" or "any portion" thereof, or is within the categories of "spur" or "side" tracks, has been held to depend on several factors, properly applied by the courts below. It is relevant to determine how the track is used—whether "for the regular train haul in transportation proper" or for "incidental services";[5] the value of the trackage and the appur-

[4] As the district court pointed out (Pet. App. 15a–16a), this longstanding administrative action is firmly supported by the statutory language:

> In Sec. 1(3)(a) the term "railroad" is defined as including ". . . all switches, spurs, tracks, terminals and terminal facilities . . . freight depots, yards and grounds . . ." It therefore appears that the Act recognizes terminals and terminal facilities as a category separate from spurs and switches. This is an indication that terminal tracks are not meant to be excluded from I.C.C. jurisdiction by Sec. 1(22). Furthermore, the fact that the statute thus defines "railroad" as including "terminals" and "terminal facilities" is at least some indication that terminals or terminal tracks may be part of a "line of railroad" within the meaning of Sec. 1(18).

[5] *Detroit & M. Ry. Co.* v. *Boyne City, G. & A.R. Co.*, 286 Fed. 540, 547 (E.D. Mich.); *Meyers* v. *Jay Street Connecting*

tenances thereto in relation to the carrier's financial position;[6] and whether the construction or abandonment of the trackage significantly affects interstate commerce or is primarily a matter of local concern.[7]

All these considerations support the decision below. Prior to their unilateral abandonment by petitioners, the tracks at the Memphis Union Station had been used for more than fifty years to carry interstate passengers on through passenger trains, not just to perform some "incidental" service characteristic of "spur" or "side" tracks. The tracks and terminal facilities were constructed "at great expense" (Pet. App. 49a),[8] and their abandonment, which leaves in-

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R., 262 F. 2d 676, 678 (C.A. 2). In *St. Louis, S.F. & T. Ry. Co. Trackage Rights*, 267 I.C.C. 30, 35, the Commission held that its approval was not necessary for a track-usage agreement whereby one carrier allowed another to use a small section of its "mainline" track for a few switching operations, but added: "It is equally clear that the use by the applicant of the tracks of the Texas company for the operation of its through passenger trains and the joint use by it of the passenger terminal of the Union Station company are transactions requiring the approval of this Commission under . . . section 5(2) of the act." 267 I.C.C. at 36.

[6] *Texas & Pac. Ry. Co.* v. *Gulf, Colo. & Santa Fe Ry. Co.*, 270 U.S. 266, 275, 277–78; *Railroad Commission* v. *Southern Pac. Co.*, 264 U.S. 331, 345–347.

[7] *United States* v. *Idaho*, 298 U.S. 105; *Piedmont & Northern Ry.* v. *Interstate Commerce Commission*, 286 U.S. 299, 311; *Alabama & Vicksburg Ry. Co.* v. *Jackson & Eastern Ry. Co.*, 271 U.S. 244, 250; *Texas & Pac. Ry. Co.* v. *Gulf, Colo. & Santa Fe Ry. Co.*, 270 U.S. 266, 278; *Railroad Commission* v. *Southern Pac. Co.*, 264 U.S. 331, 346.

[8] In 1925, the Commission valued the property of petitioner Memphis Union Station Company for rate-making purposes at $2,259,000. *Memphis Union Station Co.—Valuation*, 97 I.C.C. 418, 423 (1925).

terstate passengers (and presumably baggage and mail) scattered at several terminals in Memphis, entails "important changes in the handling of interstate traffic and passengers." *Railroad Commission* v. *Southern Pac. Co.*, 264 U.S. 331, 346. Moreover, the extensive tracks and facilities at the Memphis Union Station (Pet. App. 57a) were "the sole terminal facilities held out to the public for access to the main line. So long as these tracks are impressed with such an additional function they are, for purposes of § 1(18)–(22), inseparable from the main line and they may not be abandoned without an I.C.C. certificate of public convenience and necessity." *Meyers* v. *Jay Street Connecting R.*, 262 F. 2d 676 (C.A. 2).

Petitioners themselves have, in the past, acknowledged the Commission's jurisdiction over the trackage involved here. In January 1962, only two years before the abandonment, petitioners applied to the Commission under Section 5(2) for approval of a two-year extension of their agreement concerning operation of the facilities of the Memphis Union Station.[9] This application was granted. *Memphis Union Station Co.—Extension of Operating Agreement*, I.C.C. Finance Docket No. 21933, April 19, 1962 (unreported). Such an application would have been both unnecessary and beyond the Commission's jurisdiction if the trackage in Memphis Union Station consisted solely of "spur, industrial, team, switching, or side tracks," as petitioners now urge. See 49 U.S.C. 1(18).

[9] Petitioner Illinois Central apparently was not a party to this application.

Petitioners' present position—based on a strained reading of *Railroad Commission* v. *Southern Pac. Co.*, 264 U.S. 331, and of the Act's legislative history [10]—cannot be reconciled with their position in 1962 or, more significantly, with long-standing administrative and judicial interpretations of the applicable provisions of the Act.[11] Considering their use, value and importance to interstate commerce, the tracks and appurtenances at the Memphis Union Station are

[10] Nowhere in the legislative material relied upon by petitioners (Pet. 11–17) is there any suggestion that all station trackage is beyond the Commission's jurisdiction. Indeed, shortly after Sections 1 (18)–(22) were enacted, the Commission held that it did have jurisdiction over such tracks. See pp. 4–5, *supra*. The tenor of the material referred to in the petition is that facilities (including depots) of primarily local character would remain under the jurisdiction of State Commissions. The Memphis Union Station is not such a facility.

[11] Petitioners' argument is also founded upon their repeated confusion of *abandonments* of a line of railroad with discontinuances of passenger service. It is clear, that where "the railroad is merely discontinuing a portion of its service, whether it be passenger or freight, there is no abandonment under Section 1 (18-20)." See *Board of Public Utility Comm'rs of N.J.* v. *United States*, 158 F. Supp. 98, 100–101 (D. N.J.); see also *Gulf, M. & O.R. Co.* v. *Louisiana Public Service Comm'n*, 120 F. Supp. 250 (E.D. La.). Thus, it is not true, as petitioners contend (Pet. 23–24), that the discontinuance of a substantial portion of the nation's passenger service shows that abandonments of trackage in railroad stations has been thought to be beyond ICC jurisdiction. That there is no relation between discontinuances of service and Commission jurisdiction over abandonments under Section 1(18) is demonstrated by petitioners' own recognition that at least some station tracks are within the Commission's jurisdiction (Pet. 11). The absence of Commission approval prior to discontinuance of service to the many stations with "through" tracks is explained in the same way as the absence of approval with regard to stations with "stub-end" tracks—*i.e.*, Section 1(18) simply does not apply to discontinuances. Petitioners' persistent characterization of the Memphis tracks as "stub-end", more-

plainly within Commission jurisdiction under Section 1(18). It has long been settled that "the purpose of the statute to develop and maintain an adequate railway system for the people of the United States requires a broader and more liberal interpretation [of Sections 1(18)–(22)] than that to be drawn from mere dictionary definitions of the words employed by Congress." *Piedmont & Northern Ry.* v. *Interstate Commerce Commission,* 286 U.S. 299, 311 (valuable trackage important to interstate commerce is not "industrial" or "interurban" track excluded from ICC jurisdiction by Section 1(22)).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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over, is wholly beside the point. It is inconceivable, we submit, that the Commission's jurisdiction would turn on whether through passenger trains come in and out of the station in question on "stub-end" or some other kind of trackage.

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